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THE NEWSPAPER AS DEFINED BY LAW

By JAMES E. POLLARD, Ph.D.

Director, School of Journalism
Ohio State University

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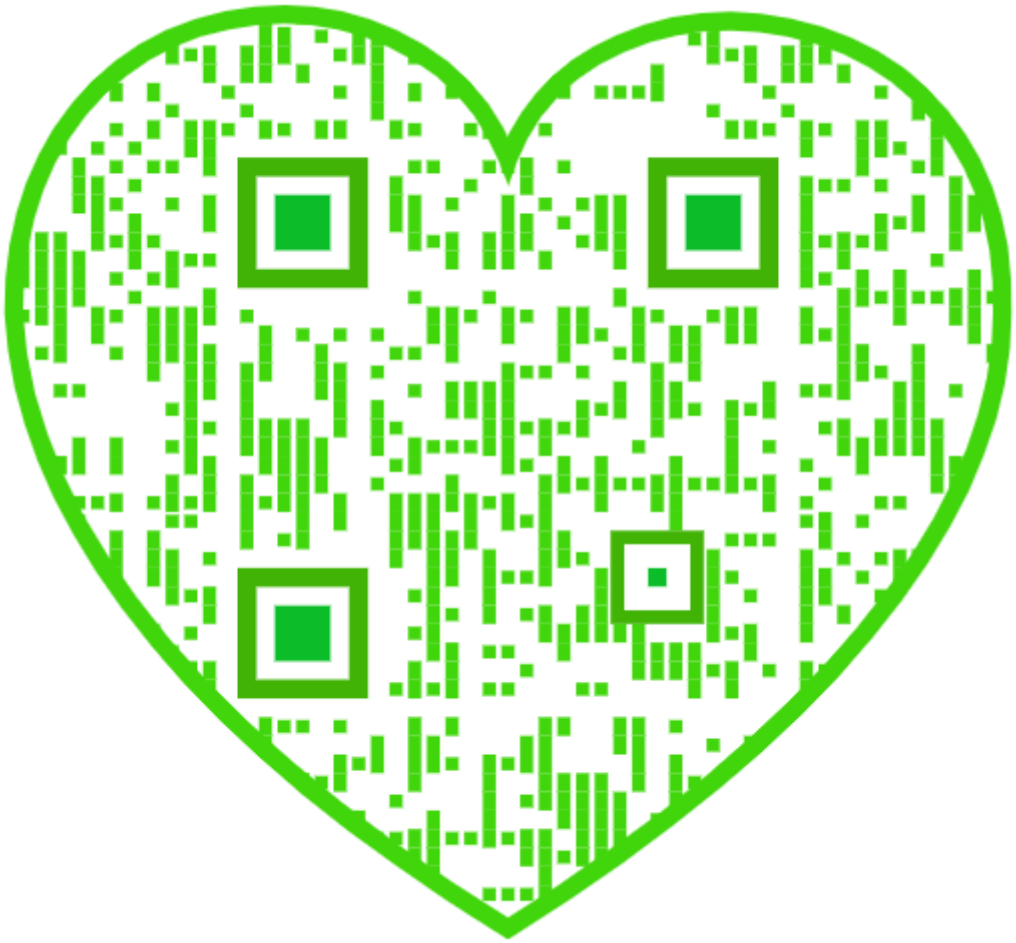

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To

OSMAN C. HOOPER

Who for so many years
has carried the torch
for better newspapers.

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INTRODUCTION

For years the courts and the legislatures have been called upon to define what constitutes a newspaper for legal purposes. The result has been a variety of definitions and much confusion. This small volume represents an attempt to assemble the available statutory definitions and many court cases that have turned upon this general question. In addition, standard dictionary definitions are given for comparison and contrast.

Basically the question of what is a newspaper generally involves some phase of public notice. With the rise of various types of competing publications having the appearance of and claiming to be bona fide newspapers, the issue has taken on new importance lately. One tendency has been to dilute accepted definitions.

The material herein has been assembled by the School of Journalism, Ohio State University, in the interest and for the convenience of all who have a proper stake in the common problem. In respect to the statutory definitions, it is believed to be virtually complete. In other aspects, as in the judicial definitions, it is illustrative or representative rather than exhaustive.

In dealing with such a knotty subject it is difficult as well as somewhat foolhardy to draw hard and fast conclusions. Just as no two individuals may quite agree, it is still more difficult to get diverse interests like the bar and the press to accept a common definition of a newspaper and, as is well known, not all sections of the press see eye to eye on this score.

Any conclusions suggested herein represent what might be called the general or orthodox point of view of the standard newspaper rather than that of either the law or of class, trade or other special publications. In arriving at them, however, other viewpoints have

been taken into account, including those of the bench and the bar.

Many hands necessarily had a part in this compilation. But for this help, the work of its assembly and analysis might have dragged on indefinitely. Grateful acknowledgment is made, therefore, for the aid of students in our course on the Law of the Press, and, among others, to Ed M. Martin, executive director, and Paul M. Gingher, general counsel, Ohio Newspaper Association; Elmo Scott Watson, editor, *Publisher's Auxiliary*; Manny Schor, N.Y.A. assistant; Professor Silas A. Harris, of the College of Law; and Professor Edward N. Doan, of the School of Journalism.

Special acknowledgment is also made for the assistance rendered through our Works Projects Administration Official Project, No. 665-32-3-45, Index of the Public Notice Laws of the 48 States, of which this study is an integral part. Particular credit is due Frank J. Malecky, project supervisor, for his painstaking interest and help.

Parts I and II of this study appeared originally in the *Ohio Newspaper* for March and April, 1940. Parts III and IV were published similarly in the *Journalism Quarterly* for March and September, 1940. All four have been revised and enlarged for the present purposes.

J.E.P.

Columbus, Ohio
June, 1940

I. DICTIONARY DEFINITIONS

WHAT properly constitutes a legitimate newspaper involves matters of far-reaching importance. A satisfactory definition, therefore, is much more than an academic question or so much legal hair-splitting. Unfortunately, not even the dictionaries agree fully as to a basic definition, perhaps partly because there are so many kinds of papers.

Of first importance in its application is the designation or selection of competent newspapers to print the many varieties of public notices. It is vital to both individual and public interests to be put on notice regarding any action, public or private, which may affect the rights of the individual, the community, or some group in the community. When society was young it was fairly simple to give personal notice. As it became more complex this was more and more difficult. So many persons may be affected today by such a notice that individual notice may be out of the question because of the cost, or the whereabouts of the individual may be unknown.

Where it is neither feasible nor necessary to give notice in person or through the mails, the law often provides that such notices may be given through the press. Some notices concern individual matters such as bankruptcy and wills. Others have to do with public business such as contracts and supplies. In either case it is important that wide publicity be given to the notice if the rights of all concerned are to be safeguarded. Since the publication of a given notice is ordinarily confined to perhaps two or three newspapers, it is also important that it shall come to the attention of the largest possible number of readers who may be concerned with it. This will usually occur when it appears in general newspapers of paid, general circulation.

Not So Simple

At first sight this would appear to be relatively simple. But all kinds of publications calling themselves newspapers try to obtain a share of this legal business. The more they succeed in this sometimes the less cer-

tain it is that the public interest will be served best thereby and the more the business of legitimate newspapers will be infringed upon. Borderline cases arise where the law fails to specify that publication must occur in a standard newspaper, or where it is silent as to just what is meant by "general" or "paid" circulation, or both. Sometimes this leaves the door open for what, by any reasonable test, are purely advertising sheets to get some of this legal business to the ultimate disadvantage of both the public and of legitimate newspapers.

Instances occur, too, where public notices in populous counties are literally buried in small newspapers which are legitimate enough within limits but whose coverage is so scant as to nullify the public purpose of the notice. There are also giveaway sheets which provide virtually blanket coverage of the community but which, aside from inadequate news and editorial contents, by their very nature lack one vital element of a real newspaper, among others. This is a voluntary, regular, and paid following of readers. A vast difference exists between a publication that has established itself sufficiently to have the public pay to read it regularly and one whose interest value to the public is so slight or doubtful that the publisher has to give it away since it cannot be sold in any quantity and survive.

Another reason for the importance of a proper and adequate definition of a newspaper is the quasi-public nature of bona fide publications. Freedom of the press is one of the basic liberties under American and British law. The U. S. Constitution guarantees but makes no attempt to define that freedom. This privilege was particularly intended to facilitate the interchange of information and to safeguard freedom of expression provided, of course, the writer or publisher takes the full legal responsibility for his exercise of such rights.

Publications with a broad general appeal properly enjoy some preference. This is shown particularly in the granting of Second Class Mailing privileges. The newspaper and the magazine of general circulation which appeal to a large portion of the reading public,

and whose continuance for disseminating information and opinion is in the public interest, perform a special function. On this premise only those publications which can properly meet the qualifications thus set up should enjoy those privileges to the full.

Public Service of Press

Bona fide newspapers, moreover, often carry their public service into action by crusades for reforms or for public improvements. The history of American journalism is replete with examples of this type of public service, often conducted at serious loss and inconvenience to the individual newspapers concerned. It is only right that the public spirited newspaper or periodical, serving the general interest, should not only be encouraged but protected in its public service function.

Another reason for such a definition concerns the business aspects of the legitimate newspaper. This private enterprise of a semi-public nature is a business which of late years has called for increased capital in the face of diminishing returns. There has also been a steady decrease in the number of newspapers, particularly dailies. Early in 1940, for example, it was reported that some 80 dailies had disappeared in the preceding 30 months. More and more cities came to have only one daily. The hazards of newspaper publishing grew as production and labor costs went up, outside competition increased, and the general economic situation hurt advertising revenues. Such considerations, plus the application and interpretation of various kinds of laws, affect newspapers much more than the layman is likely to realize. It is of very real importance to such publications, therefore, to be able to fall back on legal and other definitions which are clear, adequate, and based on sound premises.

A lay definition of a newspaper might be somewhat as follows:

> A publication issued once a week or oftener containing chiefly general news of the day, editorial, and other opinions, besides other reading matter, including advertisements, and of such a nature as to have a paid, regular and general public following.

Dictionary Definitions

But some of the difficulties of arriving at a simple or universally applicable formula will be suggested by the following array of more formal definitions of newspaper culled from dictionary sources:

Century—a paper containing news; a sheet containing intelligence or reports of passing events, issued at short but regular intervals, and either sold or distributed gratis; a public print, or daily or weekly or semi-weekly periodical, that presents the news of the day, such as the doings of political, legislative, or other public bodies, local, provincial, or national current events, items of public interest on science, religion, commerce, as well as trade, market and money reports, advertisements, and announcements, etc. Newspapers may be classed as general, devoted to the dissemination of intelligence on a great variety of topics which are of interest to the general reader, or special, in which some particular subject, as religion, temperance, literature, law, etc., has prominence, general news occupying a secondary place.

Funk & Wagnalls—a publication issued for general circulation at frequent and regular intervals, usually daily or weekly, intended to convey intelligence of current events, express some specific opinion or view, or represent a particular class or body; in general a public print that circulates news, advertisements, and other matter of general or special interest.

Oxford—a printed, now usually daily or weekly publication containing the news, commonly with the addition of advertisements and other matters of interest.

Shorter Oxford—a printed, now usually daily or weekly, publication containing the news, advertisements, literary matter and other items of public interest.

Universal—a sheet of paper printed and distributed at short intervals for conveying intelligence of passing events; a public print which circulates news, advertisements, reports of proceedings of legislative bodies and other bodies, public announcements, and the like.

Webster's New International—a paper printed and distributed, at stated intervals, usually daily or weekly, to convey news, advocate opinions, etc., now usually containing also advertisements and other matters of public interest . . .

Anderson's Law—a publication containing a narrative of recent events and occurrences published at short intervals from time to time.

In the language of the commercial world, "a publication in numbers consisting commonly of single sheets and published at short intervals conveying intelligence of passing events.

Black's Law—A publication in numbers, consisting commonly of single sheets, and published at short and stated intervals, conveying intelligence of passing events.

Bouvier's Law—papers for conveying news printed and distributed periodically.

Rapalji & Lawrence, American and English Cases—A periodical publication containing intelligence of passing events.

Stroud's Judicial—The word "newspaper" shall mean, any paper containing public news, intelligence or occurrences, or any remarks or observations therein, printed for sale, and published in England or Ireland periodically or in parts or numbers at intervals not exceeding twenty six days between the publication of any two such papers, parts, or numbers; also any paper printed in order to be dispersed and made public weekly or oftener, or at intervals not exceeding twenty six days, containing only or principally advertisements.

Wade, Law of Notices—What Is a Newspaper. In order to fulfill the terms of the law, the notice must be directed, by the court or officer, to be inserted, for the statutory time, in some paper printed and circulated for the dissemination of news; but it is not essential that, to answer the description, the paper shall be devoted to the dissemination of news of general character. It may, with equal propriety, be published in a paper devoted exclusively to the discussion of religious, legal, commercial or scientific topics, and the diffusion of knowledge touching special matters within its limited sphere, as in a public journal, the columns of which are open to news of general character. It may be a religious newspaper, a commercial newspaper, a legal newspaper, or a scientific newspaper, or a political newspaper.

Widdifield, Words and Terms Judicially Defined—In the Libel and Slander Act, R.S.O. ch. 71, "newspaper" means a paper containing public news, intelligence, or occurrences, or remarks or observations thereon, printed for sale and published periodically, or in parts or numbers, at intervals not exceeding thirty one days between the publication of any two of such papers, parts or numbers, and includes a paper printed in order to be made public weekly or oftener, or at intervals not exceeding thirty one days, and containing only, or principally, advertisements.

For good measure, a definition by Col. R. R. McCormick, publisher of the Chicago *Tribune*, is also given:

> The newspaper is an institution developed by modern civilization to present the news of the day, to foster commerce and industry, to inform and lead public opinion, and to furnish that check upon government which no constitution has ever been able to provide.

Difficulties Apparent

From these definitions it is not hard to see why there is so much difficulty in the matter. Those which are relatively simple are inadequate and those which tend to be inclusive get mired in technicalities. Not only the frequency but the regularity of publication is important. Nor is it enough that a standard newspaper shall contain news but it should be "spot" or current news to make it a true general newspaper and distinct from other publications. Any adequate definition, moreover, must emphasize the news and editorial functions of the newspaper as not only essential but primary so as to make advertising and other matter secondary.

The Wade definition has to do, of course, with the publication of legal notices. But even though some courts have confirmed the dictum that "it is not essential that to answer the description, the paper shall be devoted to the dissemination of news of general character," the soundness of such a conclusion is highly questionable. So, too, with the assertion that, "It may, with equal propriety, be published in a paper devoted exclusively to the discussion of religious, legal, commercial or scientific topics, and the diffusion of knowledge touching special matters within its limited sphere, as in a public journal, the columns of which are open to news of general character." If this assertion had been qualified by saying that ". . . it is not *always* essential," and that "*sometimes* it may, with equal propriety . . ." one might accept this definition within limits.

It is true that other publications are sometimes recognized as meeting the legal requirements for the purpose of public notices but this is usually limited, or should be, to supplementary notices. A legal notice pub-

lished exclusively in such special and class publications meets only partially at best the accepted legal requirements of giving the *maximum* publicity to a legal notice. Nowhere does such a practice seem to be followed exclusively. The probabilities are that wherever such recognition has been accorded, it was originally *in addition* to publication in standard newspapers. Moreover, it probably resulted from the insistence of special interests and pressure groups such as the bar, the court newspapers, and religious and fraternal bodies or organizations.

"General public" can mean only one thing, taken literally. The surest way to defeat the requirement in regard to public notice is to hide it in some obscure publication which reaches only special groups or whose circulation is so small as to be negligible.

Related Distinctions

Certain related distinctions must be kept in mind continually. The terminology of publishing is somewhat loose, or at least in practice there is some confusion of tongues which, of course, does not improve the situation. Among such terms pertinent here are:

Notice—
- Public notice
- Official notice
- Legal advertising
- Official advertising

Newspaper—
- Standard newspaper
- Class, trade or commercial newspaper
- Court newspaper
- Legal newspaper

Shopper, or *Giveway*—

Legal, or *Lawful*—

Notice. In principle, the four kinds listed are much the same. There are some differences, however, as for example certain types of notices are public, that is, official, and some are private or individual. Some are mandatory and some are permissive. All, however, are

published in the public interest as a matter of notice or as a matter of record, or both. They are best referred to by the generic term, public notice, or as legal advertising although the latter is somewhat ambiguous since it also implies the existence or possibility of illegal, i.e., unlawful advertising. While this latter may occur, it is not pertinent here.

Newspaper. This definition is the core of the problem. The task is to distinguish among the various kinds cited where the line of demarcation is sometimes faint. The standard newspaper is simply that kind which the great body of the public is in the habit of reading daily or weekly, containing local (and foreign) current news, editorial matter and advertisements, and for which the reader pays. But the class or trade paper is usually one of special and limited circulation, published in behalf of and specializing in news and other reading matter of interest to a particular group such as a religious body, a trade association, or one of the professions. Such a publication may be selected because of its special interest or application but of doubtful value to the public at large, especially in view of the limited circulation. Yet difficulties arise here because it is on these qualities that such publications base their claims to eligibility for legal advertising.

The court newspaper and the legal newspaper are essentially the same. Here again the word "legal" is ambiguous. In principle these are class publications devoted chiefly to news of the court and legal matters, but containing some general news such as that which appeals to attorneys, certain public officials, real estate and insurance brokers, and others.

Shopper, or Giveaway. Technically, these are not identical. The "Shopper" is a publication devoted primarily to the advertising of local retailers and which may or may not attempt to cover the news of the community. The "Giveaway" probably goes to greater lengths in providing local news. They are lumped together here, however, because both are distributed free although the "Giveaway" may appear to charge a nom-

inal sum, and because in both cases the emphasis is on the advertising contents rather than on the news and editorial matter.

Legal, or Lawful. The distinction between these two has already been drawn so that it will suffice here to repeat that they should be used with care.

From the foregoing it should be clear that neither the dictionaries nor ordinary usage offer reliable guides or authority in making distinctions that are frequently necessary. The pity is that both the statutes and judicial decisions defining a newspaper for these purposes are likewise vague, inadequate and often contradictory. The result is frequently confusion or inability to attain necessary ends.

II. STATUTORY DEFINITIONS

THESE statutory definitions of "newspaper" were found after several years' search in the codes of 43 states. The only states not having such definitions are Delaware, Massachusetts, New Hampshire, South Carolina, and Tennessee. This latter fact was confirmed by last minute correspondence with the attorney generals of those states.

As far as can be established, this compilation of definitions is not only up to date but complete. In this latter respect it is believed to be the first complete list of its kind. It contains more than twice as many statutory definitions as any previous collection that came to the attention of the present compilers.

Even casual examination will show the great variety and utter lack of uniformity in these statutory definitions of what constitutes a newspaper for legal purposes. The definitions apply chiefly to the qualifications and requirements of publications eligible to carry public notices and other forms of so-called legal and official advertising. They are analyzed in detail in a separate section that follows.

Study of the many provisions included in these definitions suggests three needs:

A model definatory statute which might point the way to greater uniformity.

Clarification and agreement on some of the more common and more important provisions such as what constitutes general circulation, and news of general interest.

Revision and amendment of many statutes to bring them up to date or to remedy important defects, or both.

Shown alphabetically by states, the definatory statutes follow:*

Alabama

SUPPLEMENT TO THE ALABAMA CODE, 1936, Chap. 324, Sec. 9527

The party in interest, or at whose instance the publication of notice is to be given by advertisement in a newspaper, may designate the newspaper in which such advertisement shall be made. If the officer charged with the duty of making the advertisement disregards such designation, and makes advertisement in some other paper, he must pay the costs thereof, and shall not be entitled to reimbursement; but all publications required by any law or mortgage or other contract to be published in a newspaper must be printed in whole or in part and published in the county in which the advertisement is published and must be published in a newspaper printed in the English language which has a general circulation in the county in which it is published, which newspaper shall have been mailed under the second class mailing privilege of the United States postoffice department from the postoffice where it was published for fifty two (52) consecutive weeks. Provided, that if there is no newspaper printing plant in the county where the advertisement is published, the printing may be done in another county in the state of Alabama.

Arizona

SUPPLEMENT TO THE REVISED CODE OF ARIZONA, 1936, Sec. 2744

For the purposes of this chapter, and unless otherwise required by the context, "newspaper" shall mean a publication regularly issued for the dissemination of news and intelligence of a general and public character at stated short intervals of time from a known office of publication, bearing the dates of issue and numbered consecutively, and not designed primarily for adver-

*Cases arising under these statutes since 1910 are shown for eleven states as indicated.

tising, or for free circulation, or for circulation at nominal rates, but having a bona fide list of paying subscribers; and shall not apply to any publication which, for at least one year, has not been admitted to the United States mails, as second class matter, under the act of Congress approved March 3, 1879.

No contract shall be awarded to any publisher of a newspaper at any public bidding for publishing any notice or matter, the cost of which is paid from public funds, unless said newspaper is published within the state of Arizona and the publisher thereof files an affidavit with his bid showing that his newspaper falls within the definition hereinabove set forth.

Arkansas

Statutes of Arkansas, 1937

8777. A legal newspaper is a publication bearing a fixed title or name, published at a fixed place of business, regularly issued at fixed intervals as frequently as once each week and having a second class mailing privilege and being not less than four pages of five columns or more each.

8778. The primary function of such a publication shall be to inform, instruct, enlighten and entertain, an intangible service to which the general public as a whole resorts for intelligence of passing events of a political, religious, commercial or social nature, local and general current happenings, editorial comment, announcements, miscellaneous reading matter, advertisements and other notices.

8779. For a newspaper to be eligible to publish legal notices, and be classified as a legal newspaper, it shall have been published at regular intervals continuously during a period of at least twelve (12) months, following the securing of a second class mailing privilege, or as a direct legal successor of such a publication issued during the immediate prior period of at least twelve months circulated and distributed from an established place of business to subscribers and readers generally of all classes in the county or counties in which it is circulated, for a definite price or consideration for each copy or at a fixed price per annum, which price or consideration shall be fixed by the publisher at which he considers the value of such publication, based upon the news value and service value it contains, and not upon the physical or concrete worth of the raw materials so sold. It is hereby ascertained by the General Assembly that the value of a newspaper or other publication coming within the requisites of this act is in the service that it renders to the community or communities it serves.

8780. The circulation of a legal newspaper shall be proven bona fide by at least fifty (50%) per cent of the subscribers thereto having paid cash for their subscriptions to the newspaper, or its agents, or through recognized newsdealers over a

period of six months. A legal newspaper must publish an average of forty (40%) per cent news matter which has sufficient merit to have created a following of paid readers.

8781. This definition shall not be construed to classify as legal newspapers, publications such as racing forms, shopping guides and similar publications devoted primarily to advertising. Special class publications having a bona fide circulation, such as patriotic organs, religious publications, construction journals, and other similar class publications shall not be affected under the provisions of this act.

California

California Political Code, 1937, Part 4, Title 5, Sec. 4460

A newspaper of general circulation is a newspaper published for the dissemination of local or telegraphic news and intelligence of a general character, having a bona fide subscription list of paying subscribers, and which shall have been established, printed and published at regular intervals in the state, county, city, city and county, or town, where such publications, notice by publication, or official advertising is given or made, for at least one year preceding the date of such publication, notice or advertisement. A newspaper devoted to the interests, or published for the entertainment or instruction of a particular class, profession, trade, calling, race, or denomination, or for any number of such classes, professions, trades, callings, races or denominations when the avowed purpose is to entertain or instruct such classes, is not a newspaper of general circulation.

(Added by Stats. 1905, page 407)

Annotation 19 Cal. Jur. 172, 1056, 1071, 1072;

90 A. L. R. 500 (necessity that newspaper be published in English language to satisfy requirements regarding publication of legal or official notice).

In re Tribune Publishing Co. of Palo Alto, (1910), 12 Cal. App. 754.

In re Miller, (1911), 15 Cal. App. 43.

In re Green, (1913), 21 Cal. App. 138.

In re Lefavor, (1917), 35 Cal. App. 145.

In re Herman, (1920), 183 Cal. 153.

In re McDonald, (1921), 187 Cal. 158.

In re Monrovia Evening Post, (1926), 199 Cal. 263.

In re David, (1929), 98 Cal. App. 69.

In re Nappa Journal, (1933), 132 Cal. App. 339.

In re Byers, (1934), 219 Cal. 449.

In re Grossman, (1935), 2 Cal. App. (2d) 748.

In re Johnson, 4 Cal. App. (2d) 308.

In re L'Italo-Americano, 2 Cal. App. (2d) 690.

Midwick Country Club vs. Los Angeles County, (1936) 53 P. (2d) 1006.

Colorado

Colorado Statutes, 1935, Vol. IV, Chap. 130

Sec. 2. Every newspaper printed and published daily, or daily except Sundays and legal holidays, or which shall be printed and published on each of any six days in every week excepting legal holidays and including or excluding Sundays, shall be considered and held to be a daily newspaper within the meaning of sections 1 to 7 of this chapter; every newspaper printed and published at regular intervals three times each week shall be considered and held to be a tri-weekly newspaper within the meaning of sections 1 to 7 of this chapter; every newspaper printed and published at regular intervals twice each week shall be considered and held to be a semi-weekly newspaper within the meaning of sections 1 to 7 of this chapter; and every newspaper printed and published at regular intervals once each week shall be considered and held to be a weekly newspaper within the meaning of sections 1 to 7 of this chapter; provided, however, that from and after January 1, 1936, no publication, no matter how frequently published, shall be considered a legal publication within the meaning of sections 1 to 7 of this chapter until and unless such publication shall have been admitted to the United States mails as second class matter under the provisions of the act of March 3, 1879, or any amendments thereof. (L. '21, P. 569, Sec. 2; C. L. Sec. 5393; L. '35, P. 687, Sec. 1.)

Sec. 3. Any and every legal notice or advertisement shall be published only in a daily, a tri-weekly, a semi-weekly, or a weekly newspaper of general circulation and printed and published in whole or in part in the county in which such notice or advertisement is required to be published, except as hereinafter provided; which said newspaper, if published tri-weekly, semi-weekly, or weekly, shall have been so published in such county, except as hereinafter provided, continuously and uninterruptedly, during the period of at least fifty two (52) consecutive weeks next prior to the first issue thereof containing any such notice or advertisement; and which said newspaper, if published daily, shall have been so published in such county, except as hereinafter provided, uninterruptedly and continuously, during the period of at least six (6) months next prior to the first issue thereof containing any such notice or advertisement; provided, that the mere change in the name of any newspaper, or the removal of the principal business office or seat of publication of any newspaper from one place to another in the same county shall not break or affect the continuity in the publication of any such newspaper if the same is in fact continuously and uninterruptedly printed and published within such county as herein provided, except as hereinafter provided; provided, further, that a newspaper shall not lose its rights as a legal publication if it should fail to publish one or more of its issues by reason of a strike, transportation, embargo or tie-up, or other casualty

beyond the control of the publishers; provided, further, that any legal notice that fails of publication for the required number of insertions by reason of a strike shall not be declared illegal, if publication has been made in one issue of said publication; provided, further, that if in any county in this state there shall not have been published therein any newspaper or newspapers for the prescribed period at the time when any such notice or advertisement is required to be published, or there shall not be published therein any newspaper or newspapers, then such notice or advertisement may be published in any newspaper or newspapers printed in whole or in part in an adjoining county and having a general circulation in whole or in part in said county having no newspaper or newspapers published therein. (L. '21, P. 570, Sec. 3; C. L. Sec. 5394; L. '35, P. 684, Sec. 1.)

Connecticut

Connecticut Statutes, 1930, Vol. II, Chap. 341, Sec. 6568

Whenever notice of any action or other proceeding shall be required, either by statute or order of court, to be given by publication in a newspaper, the newspaper selected for that purpose, unless otherwise expressly prescribed, shall be one published in this state and having a substantial circulation in the town in which at least one of the parties, for whose benefit such notice is given, resides.

Supplement to Connecticut Statutes, 1939, Chap. 341, Sec. 1475e

Legal Notices. Each provision of the general statutes, the special acts or the charter of any town, city or borough which requires the insertion, in a daily newspaper, of an advertisement of a legal notice, is amended to permit such advertisement to be inserted in a weekly newspaper; but this section shall not be construed to reduce or otherwise affect the time required by law for the giving of such notice.

Florida

Florida General Laws, 1927, Vol. II, Sec. 4901

Whenever by legislation a publication or notice in a newspaper has been or is directed or permitted in the nature of or in lieu of process, or for constructive service, or in initiating, assuming, reviewing, exercising, or enforcing jurisdiction or power, or for any purpose, the contemporaneous and continuous intent and meaning of such legislation, all and singular, existing or repealed, is and has been and is hereby declared to be and to have been, and the rule of interpretation is and has been, a publication in a paper printed and published periodically once a week

or oftener, wholly or in a large part in the English language, entered or qualified to be admitted and entered as second class matter at a postoffice in the county where published, for sale to the public generally, available to the public generally for the publication of official or other notices and customarily containing information of a public character or of interest or of value to the residents or owners of property in the county where it is published, or of interest or value to the general public. (Ch. 12104, Acts 1927, SS 1.)

Georgia

Georgia Code, 1933, Titles 39-45

Sec. 39-1102. In all cases where the law requires citations, notices, or advertisements by ordinances, clerks, sheriffs, county bailiffs, administrators, executors, guardians, trustees, or others to be published in a newspaper for 30 days, or for four weeks, or once a week for four weeks, it shall be sufficient and legal to publish the same once a week for four weeks (that is, one insertion each week for each of the four weeks) immediately preceding the term or day when the order is to be granted, or the sale is to take place; and the number of days between the date of the first publication and the term or day when the order is to be granted or the sale to take place, whether more or less than 30 days, shall not in any manner invalidate or under irregular the said notice, citation, advertisement, order of sale.

Sec. 39-1103. No journal or newspaper published in this State shall be declared or made the official organ of any county for the publication of sheriff's sales, ordinary's citations, or any other advertising commonly known and termed "official or legal advertising" and required by law to be published in such county official newspaper, unless such newspaper shall have been continuously published and mailed to a list of bona fide subscribers for a period of two years, or is the direct successor of such journal or newspaper, and no change shall be made in the official organ of any county except upon the concurrent action of the ordinary, sheriff and clerk of the superior court of said county or a majority of said officers; Provided, that in counties where no journal or newspaper has been established for two years the official organ may be designated by the ordinary, sheriff and clerk of the superior court, a majority of these officers governing.

McGinty vs. Chambers, (1936), 185 S.E. 513.

Georgia Laws, 1939

An act to amend Sec. 39-1103 of Georgia Code 1933 by adding a subsection No. 39-1103(a) which shall read as follows:

Sec 2. Provided, that in all counties in the State of Georgia in which there is a city having a population of not less than 6410 and not more than 6415 according to the official census of the

United States of the year 1930, where there are published two or more journals or newspapers qualified under this section to be the official organ of any county, then and in that event the said officers shall rotate every two years the official printing between said newspapers, provided said papers are published at the county site.

Idaho

IDAHO CODE, 1932, Vol. III, Title 58-106

No legal notice, advertisement or publication of any kind required or provided by the laws of the state of Idaho, to be published in a newspaper, shall be published or have any force or effect, as such, unless the same be published in a newspaper printed and published in the county in which notice or advertisement is required to be printed, having a general circulation therein, and which said newspaper, if published weekly, has been continuously and uninterruptedly published in said county during a period of 78 consecutive weeks prior to the first publication of said notice, or advertisement, and, if published daily, has been so published as a daily paper in said county during a period of twelve consecutive months prior to the first publication of said notice or advertisement: provided, that nothing in this chapter shall invalidate the publication of such notice or advertisement in any newspaper which has simply changed its name or changed the place of publication from one part of the county to another part thereof, without breaking the continuity of its regular issues for the required length of time: and, provided further, that this chapter shall not apply to counties in which no newspaper has been published for the required length of time.

IDAHO SESSIONS, 1933, Chap. 154, p. 233

A newspaper published within the state of Idaho for six (6) consecutive days, excepting legal holidays, is a daily newspaper.

Robinson vs. Latah County, (1936), 56 Idaho 759.

Illinois

ILLINOIS STATUTES, 1939, Chap. 100

SEC. 2. Whenever any notice is required by law to be published by any clerk, sheriff, notice in chancery, or other office, in a newspaper, the plaintiff or complainant or his attorney, shall have the right to direct in what newspaper the notice shall be published, and if such officer shall make publication containing to such direction, shall not be allowed to collect the costs thereof. This section shall not apply to any case where the court directs in what newspaper publications shall be made.

SEC. 5. When any notice is required by law or contract to be published in a newspaper (unless otherwise expressly provided

in the contract), it shall be intended to be in a secular newspaper of general circulation, published in the city, town or county or some paper specially authorized by law to publish legal notices, in the city, town or county.

SEC. 10. That whenever it is required by law that any legal notice or publication shall be published in a newspaper in this state, it shall be held to mean a newspaper that has been regularly published for at least six months prior to the first publication of said notice, or a merged or consolidated newspaper formed by the merger or consolidation of two or more newspapers, one of which has been regularly published for at least six months prior to the first publication of the notice.

People vs. Snow, (1917), 279 Ill. 289.

Eisenberg vs. Wabash, (1934), 355 Ill. 495.

People ex rel, Toman vs. 110 S. Dearborn St. Bldg. Corp., (1940), 372 Ill. 459.

Indiana

INDIANA STATUTES, 1933, Vol. X, Chapter 7, Sec. 49-704

The term "newspaper" as used in this act shall be construed to mean a weekly, semi-weekly, tri-weekly or daily newspaper which shall have been published for five (5) consecutive years in the same city or town: Provided, That for the purpose of this act, whenever reference is made to a political newspaper or to any newspaper representing any political party such terms shall be construed to mean a newspaper which has declared its political faith or adherence by editorial comment or otherwise, and which is generally known to profess allegiance to some designated political party.

Board of Com'rs of Decatur County vs. Greensburg Times, (1939), 19 N.E. (2d) 459.

Iowa

IOWA LAWS, 1939, Chap. 241, p. 350

For the purpose of establishing and giving assured circulation to all notices and/or reports of proceedings required by statute to be published within the state, where newspapers are required to be used, newspapers of general circulation that have been established, published regularly and mailed through the post-office of current entry for more than two years and which have a bona fide paid circulation recognized by the postal laws of the United States shall be designated for the publication of notices and/or reports of proceedings as required by law.

The rights of newspapers now legally entitled to publish said notices, or those newspapers of general circulation that are established prior to January 1, 1940, shall not be affected by fail-

ure to have completed two years of regular publication at the time this act is passed.

Kansas

Kansas Statutes, 1935, Chap. 64, Sec. 64-101

No legal notice, advertisement or publication of any kind required or provided by any of the laws of the state of Kansas, to be published in a newspaper shall have any force or effect as such unless the same be published in a newspaper of the county having general circulation therein, which newspaper has been admitted to the mails as second class matter in said county during the period of one year prior to the first publication of the legal notice, advertisement or publication: Provided, however, that nothing in this act shall invalidate the publication in a newspaper which has simply changed its name or moved its place of publication from one part of the county to another part, or suspended publication on account of fire, flood, or other unavoidable accidents for not to exceed ten weeks within the year last preceding the first publications of the legal notice, advertisement or publication; And provided further, that nothing in this act shall apply to counties within which no newspaper has been published the requisite length of time; Provided, that all legal publications heretofore made within the last year which has, on account of flood, fire, or other unavoidable accidents, suspended publication for a period not exceeding ten weeks, are hereby legalized.

Kentucky

Supplement to Kentucky Statutes, 1939, Sec. 14a-1

In addition to the notices now required by law to be posted, all public sales of any kind of property, when sold under execution, judgment or decree, shall unless otherwise agreed upon by the parties to such execution, judgment or decree to be advertised in the newspaper of bona fide circulation published in the county of such sale at least once a week for three consecutive weeks next preceding the day of sale; Provided, that in counties where there is a daily newspaper published or in general circulation, publication of such notice of sale for three consecutive days next preceding the day of sale shall be sufficient. The advertisement shall state the time, place and terms of sale and shall give a description of the property to be sold: Provided, that the newspaper advertisement herein provided for shall not be necessary where the appraised value of the property to be sold is less than one hundred dollars, to be ascertained by appraisement in each case as now provided by law. (1938, C. 25, ss 1; 1902, C. 92, P. 213, ss 1.)

Sec. 14a-1 a. The term "bona fide circulation" is defined for

the purpose of this Act to mean a circulation consisting of subscribers who subscribe for and actually pay for their subscriptions. The term shall not be construed to include any newspaper whose circulation or any part thereof is distributed free of cost to persons receiving said newspaper, exclusive of copies to active correspondents and/or checking copies to advertisers and advertising agencies, and/or exchange with other publications. Neither shall the term be construed to include any newspaper whose circulation or any part thereof is paid for by some advertiser, merchant or promoter. (1938, C. 25, ss 2.)

Louisiana

Louisiana General Statutes, 1932, Vol. II, Sec. 4435

In all parishes of the state, outside of the parish of Orleans, where advertisements are required to be made in relation to judicial proceedings or in the sale of property under judicial process, or in any other legal proceeding of whatsoever kind, they shall be published in an English newspaper printed in the parish in which the proceedings are carried on. . . .

Sec. 4439. In the Parish of Orleans, where advertisements are required to be made in relation to judicial proceedings, or in the sale of property under judicial process or in any other legal proceeding of whatever kind, they shall be published in a daily newspaper published in the English language, and which shall so have been published as a daily paper for at least one year prior to the insertion of said advertisement or publication. . . .

Sec. 4445. When advertisements are required to be made in relation to judicial process, or in the sale of property for unpaid taxes, or under judicial process of whatever kind, the said advertisements shall be made in the English language only.

Maine

Maine Laws, 1939, Chap. 291, p. 327

To be qualified as a medium for the publication of legal notices, legal advertising and the matter required by law to be published in a newspaper, a newspaper unless otherwise ordered by the court in the proceeding, must be published and printed in whole or in part in this state, or where the law so requires in whole or in part in the county where the notice is required to be published; must be printed in the English language and must be entered as second class postal matter in the United States mails at the postoffice in the place of such printing and publication, providing that nothing herein contained shall be construed to alter or in any way affect the existing law governing the foreclosure of real estate mortgages, chattel mortgages or any conditional sales contract by publication.

Maryland

MARYLAND LAWS, 1937, Chap. 283, Sec. 1, p. 548

That whenever it is required to publish in Prince George's County any resolution, official proclamation, law, notice, or advertisement of any sort, kind, or character, including proposals for bids for public work or otherwise by the State of Maryland, or by any board, or commission, or any State official, or office, or by the County Commissioners of Prince George's County, or any officer thereof, or any governmental body created under the laws of this State, or any officer or official thereof, or by any party litigant, or otherwise involved in or concerned with matter pending in any court in Prince George's County, for any legal publication of any character whatsoever, the newspaper or newspapers selected for such publication or publications must meet and satisfy the following qualifications, namely: Said newspaper or newspapers shall be printed in the English language, shall have been published continuously and consecutively at least once a week in Prince George's County for not less than two years, and shall have been entered as second class mail matter under the Postal Laws and Regulations of the United States; provided, however, that nothing in this Act shall be construed to disqualify any existing newspaper in Prince George's County now qualified by law to publish such notices, proceedings and advertisements in Prince George's County.

Michigan

MICHIGAN STATUTES, 1938, Vol. XX, Chap. 266, Sec. 27. 801

The term "newspaper" as used in any statute of this state relative to the publication of a notice of any kind, shall be construed to refer only to a newspaper published in the English language for the dissemination of local or telegraphic news and intelligence of a general character, or to a newspaper published wholly or chiefly for the dissemination of legal news, and which shall have been admitted by the United States postoffice department for transmission as mail matter of the second (2nd) class and which shall have a bona fide list of paying subscribers or to a newspaper having a free circulation which has been published at regular stated intervals under the same name and in the same location without interruption for at least two (2) years. No publication shall be classed as a newspaper for the publication of legal notices until it shall have been established, published and circulated at regular stated intervals without interruption for at least one (1) year in the state, county, city, village and township where such publication, notice by publication or official advertising is given or made and any legal notice or official advertising, or the publication of a notice of any kind

required by law, including all orders issued by any court of record, probate courts, circuit court commissioners and justice courts, shall be published in a newspaper qualifying as above described.

Minnesota

1938 Supplement to Minnesota Statutes, Vol. III, Sec. 10935

A newspaper in order to be qualified as a medium of official and legal publication, shall:

(1) Be printed in the English language from its known office of publication within the city, village or town from the place from which it purports to be issued and in column and sheet form equivalent in space to at least 450 running inches of single column, two inches wide.

(2) It shall be issued at least once each week, and if a daily at least six days each week, from a known office, established in such place for publication and equipped with skilled workmen and the necessary material for preparing and printing the same; except in any week in which a legal holiday or Thanksgiving day is included, not more than five issues of a daily paper shall be necessary, which shall also apply when the legal holiday falls upon Sunday. Provided that the press work on that part of the newspaper devoted to local news of interest to the community which it purports to serve, shall be done in its known office of publication, except in cities of the first class when the press work may be done elsewhere, within the same city.

(3) In its makeup, twenty five per cent of its news columns must be devoted to local news of interest to the community which it purports to serve. It may also contain general news, comment and miscellany, and must not wholly duplicate any other publication, and be not entirely made up of patents, plate matter and advertisements.

(4) Be circulated in and near its place of publication to the extent of at least two hundred and forty copies regularly delivered to paying subscribers and have entry as second class matter in its local postoffice. Any person interested in the legality of any publication may request of the county auditor of the county in which such publication is made proof of the legal standing of the newspaper in which such publication is contained. The county auditor shall then demand of the publisher of such newspaper as a public record proof of these qualifications, together with a list of the two hundred and forty paying subscribers. Failure of such publisher to comply with this demand within ten days after receipt of such request shall then forfeit the legal standing of such newspaper.

Legal Ledger vs. Hodgson, (1929), 176 Minn. 635.

North Central Publishing Co. vs. City of St. Paul, (1936), 269 N.W. 835.

Mississippi

Mississippi Laws, 1936, Chap. 313, Sec. 1, p. 592

That whenever it is required by law that any legal notice shall be published in a newspaper in this state, it shall be held to mean publication in some newspaper which has been established for at least twelve months next prior to the first publication of the notice to be published. Provided, however, that the provisions of this section shall not apply to any newspaper published at the time of the approval of this act, regardless of the length of time it has been published. Provided, further, that in the event of the discontinuance of the publication of the only newspaper in any county qualified to publish legal notices, any other newspaper published in the county regardless of the length of time it has been published, shall be deemed qualified to publish legal notices.

Elliot vs. Board of Supervisors of Lamar County, (1938), 179 So. 344.

Missouri

Missouri Statutes, 1937, Vol. II, Sec. 747, p. 970

Every order against non-resident, absent or unknown defendants shall be published in some newspaper published in the county where suit is instituted, if there be a paper published there, which the plaintiff or his attorney of record may designate; if not, then in some paper published in this state, which the plaintiff or his attorney of record may designate as most likely to give notice to the person to be notified; the publication shall be for four weeks successively, published at least once a week, the last insertion to be at least fifteen days before the commencement of the term at which the defendant is required to appear.

Vol. VIII, Sec. 7631, p. 6026

In all cities having a population of more than six hundred thousand inhabitants, as shown by the last United States census, no notice or other advertisement permitted or required by law to be made in conformity with a power of sale of real estate contained in any mortgage or deed of trust shall be valid or sufficient unless such notice or other advertisement shall be published in a daily newspaper, published in such city, whose annual cash receipts from circulation shall exceed six thousand dollars; and such receipts shall be paid by the bona fide individual and separate subscribers of such newspapers in such city, and in computing such receipts there shall not be counted or included cash received from advertising or from any other source.

Vol. IX, Sec. 13777, p. 6527

In all cities of this state which now have or shall hereafter

have a population of one hundred thousand inhabitants or more, all advertisements, judicial notices and orders of publication required by law to be made shall be published in some daily newspaper of such city of general circulation therein and published for at least one year.

Vol. IX, Sec. 13779, p. 6527

No public notice or advertisement directed by any court or required by law to be published in a newspaper, in cities of 100,000 inhabitants or more, shall be valid unless it be published in a daily newspaper qualified to publish such notices and advertisements under the provisions of sections 13777 to 13779 inclusive.

Montana

Montana Revised Codes, 1935, Vol. II, Sec. 4482

It is hereby made the duty of the county commissioners of the several counties of the state of Montana to contract with some newspaper, printed and published at least once a week, and of general circulation, printed and published within the county, and having been printed and published continuously in such county at least one year immediately preceding the awarding of such contracts, to do and perform all the printing for which said counties may be chargeable including all legal advertising and notices required by law to be made.

State vs. Board of Com'rs of Big Horn County, (1926), 77 Mont. 316.

State ex rel. Bowler vs. Board of Com'rs of Daniels County, (1938), 76 P. (2d) 648.

Shelley vs. Normile, (1940), 94 P. (2d) 206.

Nebraska

Supplement to Compiled Statutes of Nebraska, 1937, Chap. 20, Sec. 20-523

No newspaper shall be considered a legal newspaper for the publication of legal and other official notices unless the same shall have a bona fide circulation of at least three hundred copies weekly, and shall have been published within the county for fifty two successive weeks prior to the publication of such notice, and be printed either in whole or in part in an office maintained at the place of publication; Provided, that the publication of legal or other official notices in the English language, in foreign language newspapers published within the county for fifty two successive weeks prior to the publication of such notice and be printed either in whole or in part in an office maintained at the place of publication, shall also be legal. (1915. P. 490; 1919. P. 309; 1922. P. 589; 1929. 20-253; 1935. P. 157.)

Nevada

NEVADA LAWS, 1933, Chap. 151, p. 192

SEC. 3. Any and all legal notices or advertisements shall be published only in a daily, a tri-weekly, a semi-weekly or a weekly newspaper of general circulation and printed in whole or in part in the county in which such notice or advertisement is required to be published; which said newspaper, if published tri-weekly, semi-weekly or weekly, shall have been so published in such county, continuously and uninterruptedly, during the period of at least fifty two consecutive weeks next prior to the first issue thereof containing any such notice or advertisement, and which said newspaper, if published daily, shall have been so published in such county, uninterruptedly and continuously, during the period of at least one year prior to the first issue thereof containing any such notice or advertisement; Provided, that the mere change in the name of any newspaper, or the removal of the principal business office or seat of publication of any newspaper from one place to another in the same county, shall not break or affect the continuity in the publication of any such newspaper if the same is in fact continuously and uninterruptedly printed and published within such county as herein provided; Provided Further, that a newspaper shall not lose its rights as a legal publication if any of the following conditions maintain: If by reason of a strike or other good cause it should suspend publication; Provided, the period shall not exceed thirty days in any calendar year.

If by reason of generally recognized economic stress of a serious nature over which the publisher has no control, it shall be necessary to suspend publication for a period not to exceed one year; Provided, however, that the provisions of this paragraph shall apply only in the case of publications that have been operating continuously for a period of five years prior to such suspension; Provided that any legal notice which fails of publication for the required number of insertions for such reason shall not be declared illegal, if publication has been made in one issue of said publication, and is resumed within a reasonable period; Provided Further, that if any county in this state there shall not have been published therein any newspaper or newspapers for the prescribed period at the time when any such notice or advertisement is required to be published, then such notice or advertisement may be published in any newspaper or newspapers having a general circulation and printed and published in whole or in part in said county.

New Jersey

NEW JERSEY LAWS, 1938, Chap. 328, p. 838

An Act concerning newspapers and amending Sections 35:1-2.1 and 35:1-2.2 of the Revised Statute.

35:1-2.1. State publications; qualifications of newspapers.

Whenever it is required to publish resolutions, official proclamations, notices or advertising of any sort, kind or character, including proposals for bids on public work and otherwise, by this State or any board or body constituted and established for the performance of any State duty or by any State official or office or commission, the newspaper or newspapers situated for such publications must meet and satisfy the following qualifications, namely: said newspaper or newspapers shall be entirely printed in the English language, shall have been published continuously for not less than two years and shall have been entered as second class mail matter under the postal laws and regulations of the United States.

35:1-2.2. Publications by counties, municipalities, individuals and corporations; qualifications of newspapers. Whenever, by law, it is required that there be published by printing and publishing in a newspaper or newspapers ordinances, resolutions or notices or advertisements of any sort, kind or character by any county, city or other municipality or municipal corporations, or by any municipal board, or official board, or body, or office, or officials, or by any person or corporation, such newspaper or newspapers must, in addition to any other qualifications now required by law, merit the following qualifications, namely: said newspaper or newspapers shall be entirely printed in the English language, shall have been published continuously for not less than two years and shall have been entered as second class mail matter under the postal laws and regulations of the United States.

New Mexico

1938 Supplement to New Mexico Statutes, Sec. 113-201

Any and every legal notice or advertisement shall be published only in a daily, tri-weekly, a semi-weekly or a weekly newspaper of general paid circulation, which is entered under the second class postal privilege in the county in which said notice or advertisement is required to be published; which said newspaper, if published tri-weekly, semi-weekly, or weekly, shall have been so published in such county continuously and uninterruptedly, during the period of at least twenty six consecutive weeks next prior to the first issue thereof containing any such notice or advertisement, and which said newspaper, if published daily, shall have been so published in such county, uninterruptedly and continuously, during the period of at least six months next prior to its first issue thereof containing any such notice or advertisement; Provided, that the mere change in the name of any newspaper, or the removal of the principal business office or seat of publication of any newspaper from one place to another in the same county shall not break or affect the continuity in the publication of any such newspaper if the same is in fact

continuously and uninterruptedly printed and published within such county herein provided; Provided, Further, that a newspaper shall not lose its rights as a legal publication if it should fail to publish one or more of its issues by reason of fire, flood, accident, transportation embargo, or tie-up, or other casualty beyond the control of the publisher; Provided, Further, that any legal notice which fails of publication for the required number of insertions by reasons beyond the control of the publisher, shall not be declared illegal, if publication has been made in one issue of said publication; Provided, Further, that if in any county in this state there shall not have been published therein any newspaper or newspapers for the prescribed period at the time when any such notice or advertisement is required to be published then such notice or advertisement may be published in any newspaper or newspapers having a general paid circulation and/or published and printed in whole or in part in said county.

New York

New York Consolidated Laws, 1930, Chap. 31, Sec. 97

The justices of the appellate division in the first department, or a majority of them shall

1. Be vested with and exercise from time to time all the powers heretofore conferred by law upon the presiding justice of the supreme court of the first judicial department.

The justices of the appellate division in the first department, or a majority of them, shall, any provision of law to the contrary notwithstanding, from time to time designate such newspapers in such department as in their opinion have such a circulation as is calculated to give public notice of a legal publication, and from time to time revoke such designation. To entitle a newspaper to such a designation, it must file with the clerk of the appellate division a statement, duly verified showing approximately the size and extent of its circulation, the time and place of its regular publication, and a statement of its charges for legal publications.

Whenever a notice, summons, citation, order or other paper shall be required by any provision of law, or by the order of any court or judge thereof, or of a surrogate or of the clerk of a court or any other official surrogate or of the clerk of a court of any other official or individual, to be published in a newspaper in the first department, or public notice of any application to a court or judge or other officer shall be required to be given by publication thereof in a newspaper in the first department, or where any court or judge thereof or a surrogate or other judicial officer or public officer is authorized or required to designate a newspaper in the first department for the publication of any such notice, summon, citation, order or other paper, the newspaper designated by any court or judge thereof, or surrogate or

other judicial or public officer, shall be a newspaper designated by the appellate division of the supreme court in the first department as hereinbefore provided, and no such publication shall be deemed to give the notice required to be given if the same is published in any newspaper in the first department which has not been designated by an order of the appellate division of the supreme court in the first department; and the publication of such notices, summons, citation, order or other paper in any undesignated newspaper in the first department shall not be deemed a compliance with any such provision of law or order of any court or judge.

Chap. 65, Sec. 89

The board of trustees of a village may designate a newspaper as the official paper of the village. If but one newspaper is published in the village continuously, it shall be designated as the official paper, if any paper is so designated. If no newspaper is published in the village continuously, any other newspaper published in the same county having a circulation in the village may be so designated. If no official paper has been designated, the designation of a newspaper for the publication of a notice, resolution, ordinance or other proceeding of the board shall be deemed a designation thereof as the official paper of the village for the purpose of such publication.

North Carolina

North Carolina Laws, 1938-1939, Chap. 170, Sec. 1, 2, p. 407

An Act To Regulate The Publication Of Legal Notices And Other Legal And Public Advertisements And To Define Newspapers In Which Such Notices And Advertisements Shall Be Published.

Sec. 1. Whenever a notice or any other paper, document or legal advertisement of any kind or description shall be authorized or required by any of the laws of the State of North Carolina, heretofore or hereafter enacted, or by any order or judgment of any court of this State to be published or advertised in a newspaper, such publication, advertisement or notice shall be of no force and effect unless it shall be published in a newspaper with a general circulation to actual paid subscribers which newspaper at the time of such publication, advertisement or notice, shall have been admitted to the United States mails as second class matter in the county or political subdivision where such publication, advertisement or notice is required to be published, and which shall have been regularly and continuously issued in the county in which the publication, advertisement or notice is authorized or required to be published, at least one day in each calendar week for at least twenty five of the twenty six consecutive weeks immediately preceding the date of the first pub-

lication of such advertisement, publication or notice; Provided that in the event that a newspaper otherwise meeting the qualifications and having the characteristics prescribed by this Act should fail for a period not exceeding four weeks in any calendar year to publish one or more of its issues such newspaper shall nevertheless be deemed to have complied with the requirements of regularly and continuity of publication prescribed herein.

SEC. 1½. Every newspaper in this State which shall publish any such legal notice or other legal advertisement, as mentioned in Section one, shall, in each calendar year, file with the Clerk of the Superior Court of the county in which it is published a sworn statement that such newspaper is a newspaper meeting the qualifications of this Act, which sworn statement, when filed, shall be prima facie evidence of the qualification of such newspaper under this Act during such calendar year, and any such legal notice or other legal advertisement published in any such newspaper filing such sworn statement as herein provided shall be valid; and any owner, publisher or manager of a newspaper who shall violate the provisions of this section, or any person who shall make or file a statement as required by this section which shall be false at the time of such statement, shall be guilty of a misdemeanor.

SEC. 2. The provisions of this Act shall not apply in counties wherein only one newspaper is published, although it may not be a newspaper having the qualifications prescribed by Section one of this Act; nor shall the provisions of this Act apply in Yadkin County nor in any county wherein none of the newspapers published in such county has the qualifications and characteristics prescribed by Section one of the Act.

North Dakota

COMPILED LAWS OF NORTH DAKOTA, 1913, Vol. I, Sec. 3173

Before any newspaper in this state shall be qualified to publish any legal notice, or any matter required by law to be printed or published in some newspaper in this state, or any public notices for any county, city or other municipality within this state, such newspaper must have been established at least one year—at least one page of the same actually printed at the place designated in the date line—and have been in regular and continuous circulation during that time with a bona fide subscription list of at least one hundred and fifty regular and continuous subscribers. Such newspaper must contain at least four pages of five columns to the page, said columns to be not less than eighteen inches in length and twelve ems pica in width, with not less than four columns of reading or news matter; or must contain eight pages of four columns to the page, or its equivalent, the columns thereof to be not less than twelve inches in length; provided, that in counties where there is no newspaper published

having the above prescribed qualifications, any newspaper at the county seat of said county shall be entitled to publish such legal notices, even though it may not have been established six months; Provided, Further, that in counties in which no newspaper is published any notices required by law to be published may be published in a newspaper printed in an adjoining county; having a general circulation in said county. It shall be the duty of the owner or publisher of every legal newspaper in the state to send to the state historical society of North Dakota, to such address as shall be designated by the secretary thereof, two copies of each issue of such newspaper.

Ohio

Ohio General Code, 1936, Vol. III, Sec. 4228

Unless otherwise specifically directed by statute, all municipal ordinances, resolutions, statements, orders, proclamations, notices and reports, required by law or ordinance to be published shall be published as follows: In two English newspapers of opposite politics published and of general circulation in such municipality, if there be such newspapers; if two English newspapers of opposite politics are not published and of general circulation in such municipality, then in one such political newspaper and one other English newspaper published and of general circulation therein; if no English newspaper is published and of general circulation in such municipality, then in any English newspaper of general circulation therein or by posting as provided in section 4232 of the General Code; at the option of council. Proof of the publication and required circulation of any newspaper used as a medium of publication hereunder shall be made by affidavit of the proprietor of either of such newspapers, and shall be filed with the clerk of council.

Vol. IV, Sec. 6255

Whenever any legal publication is required by law to be made in a newspaper or newspapers published or printed in a municipality, county, or other political subdivision, the newspaper or newspapers used shall have at least one side thereof printed in such municipality, county, or other political subdivision; and whenever any legal publication is required by law to be made in a newspaper or newspapers of general circulation in a municipality, county, or other political subdivision, without further restriction or limitation upon a selection of the newspaper to be used, such publication shall be made in a newspaper or newspapers at least one side of which is printed in such municipality, county, or other political subdivision, unless there be no such newspaper or newspaper so printed, in which event only, such publication shall be made in any newspaper or newspapers of general circulation therein. Where there are not two or more newspapers published and printed in any municipality, county or other political subdivision in the manner defined by the provi-

sions of this act, then any legal publication required by law to be made in a newspaper or newspapers published or printed in a municipality, county, or other political subdivision may be made in any newspaper or newspapers regularly issued at stated intervals from a known office of publication located within the municipality, county or other political subdivision. For the purpose of this act a known office of publication is a public office where the business of the newspaper is transacted during the usual business hours, and such office shall be shown by the publication itself.

Ohio Code, 1936, Sec. 5704-2

As used in Sections 5694 and 5704, as amended by this act, and in any other sections of the General Code, to which the same are applicable unless otherwise specifically defined therein, the term "newspaper" shall be held to mean a publication bearing a title or name, published at a fixed place of business regularly, issued at fixed intervals as frequently as once a week and having a second class mailing privilege, being not less than four pages of five columns or more each; the primary function of such publication shall be to inform, instruct, enlighten and entertain, to which the general public as a whole will and does resort for intelligence of passing events of a political, religious, commercial and social nature, local and general current happenings, editorial comment, announcements, miscellaneous reading matter, advertisements and other notices; providing such a publication to be a newspaper of general circulation shall have been published at regular intervals continuously during a period of at least twenty four months or as a direct legal successor of such publication issued during the immediate prior period of at least two years; circulated and distributed from an established place of business to subscribers or readers generally of all classes in the county or counties in which it is circulated, for a definite price or consideration for each copy or at a fixed price per annum, the circulation of which is proven bona fide by at least fifty per cent thereof being paid for by regular subscribers or through recognized news dealers; and must publish an average of forty per cent news matter which has sufficient merit to have created a following of paid readers, to be a newspaper of general circulation.

Ohio Code, 1936, Chap. 22-1, Sec. 6319-2

Any person or persons, firm or firms, co-partnership or voluntary association, joint stock association, company or corporation, wherever organized or incorporated, engaged in the business of printing or publishing a newspaper, magazine or other periodical sold or offered for sale in this state, is a newspaper company, and any such newspaper, magazine or other periodical publication is a newspaper within the meaning of this act.

State vs. Wood County Com'rs, (1911), 33 O.C.C. 93.
Toledo vs. Babcock, (1911), 30 O.C.C. 29.
State ex rel. Harris vs. Quigley, (1939), 134 O. St. 466.

Oklahoma

Oklahoma Statutes Annotated, 1936, Chap. 4, Title 25, Sec. 102

No legal notice, advertisement or publication of any kind required or provided by any of the laws of the State of Oklahoma to be published in a newspaper, shall have any force or effect as such, unless the same be published in a newspaper of the county having a paid circulation therein, and which newspaper has been continuously and uninterruptedly published in said county during the period of One Hundred and Four Weeks consecutively, prior to the first publication of notice or advertisement; Provided, that nothing herein shall invalidate the publication in a newspaper which has moved its place of publication from one part of the county to another part without breaking the continuity of its regular issues for the requisite length of time or the name of which may have been changed when such change of location may have been made: Provided, further, that failure to issue or publish such newspaper for a period of fourteen days on account of inability so to do arising from fire, accident or other unforseen cause, or by reason of the pendancy of mortgage foreclosure, attachment, execution or other legal proceedings against the type, presses, or other personal property pertaining to such newspaper, shall not be deemed a failure to maintain continuous and consecutive publication as required by this Section, nor invalidate the publication of a notice otherwise valid; and, provided further, that nothing herein shall apply to counties wherein no newspaper has been published the requisite length of time; provided that nothing herein shall affect legal publications in newspapers heretofore published, or such newspapers as may hold contracts with County Commissioners to do county printing; and, Provided further, that no provisions herein shall in any way affect newspapers that have become legal newspapers under existing statutes. (R. L. 1910, Sec. 2954; LAWS 1935, P. 1, (H. B. No. 99) Sec. 1.)

Oregon

Oregon Code Annotated, 1930, Vol. I, Sec. 1-510, p. 254

The term "newspaper" as used in this section shall refer and apply to only such newspapers of general circulation made up of at least four pages of at least five columns each, with type matter of a depth of at least 17¾ inches, or, if smaller pages, then comprising an equivalent amount of type matter, which shall have at least 200 bona fide subscribers living within the county in which the newspaper is published; provided further, that such newspaper shall have been established and regularly and uninterruptedly published in such county at least once a week during a period of at least 12 consecutive months immediately preceding

the first publication of such notice, summons, citation, notice of sheriff's sale or other legal advertisement; provided further, that interrupted publication because of fire, flood or the elements for a period not to exceed 14 days, either before or after a newspaper has fulfilled the qualifications of a newspaper for the publication of legal notices, shall not be deemed to have taken from a newspaper its qualification as a newspaper for the publication of legal notices. (L. 1917, ch. 240, sec. 1, p. 461; L. 1929, ch. 445, sec. 2, p. 673.)

SEC. 1-512

A bona fide subscriber is hereby defined as one who has been a subscriber for an uninterrupted period of 12 months, or has paid his subscription for a period of 12 months, such subscription in no case to be over 12 months in arrears. (L. 1929, ch. 445, Sec. 4, p. 673.)

Pennsylvania

PENNSYLVANIA STATUTES, 1939, Vol. XLIII-XLVII, Title 45, Sec. 3

"Newspaper" means a printed paper or publication, bearing a title or name, and conveying reading or pictorial intelligence of passing events, local or general happenings, printing regularly or irregularly editorial comment, announcements, miscellaneous reading matter, commercial advertising, classified advertising, legal advertising, and other notices, and which has been issued in numbers of four or more pages at short intervals, within daily, twice or oftener each week, or weekly, continuously during a period of at least six months, or as the successor of such a printed paper or publication issued during an immediate prior period of at least six months and which has been circulated and distributed from an established place of business to subscribers or readers without regard to number, for a definite price or consideration, either entered or entitled to be entered under the Postal Rules and Regulations as second class matter in the United States mails, and subscribed for by readers at a fixed price for each copy, or at a price fixed per annum; Provided, A newspaper may be either a daily newspaper, a weekly newspaper, newspaper of general circulation, official newspaper or a legal newspaper as defined by this act.

"Daily Newspaper" means a newspaper regularly issued every day in the week, either including or excluding Sunday and legal holidays.

"Weekly Newspaper" means a newspaper issued at least once a week.

"Newspaper of General Circulation" means a newspaper issued daily, or not less than once a week, intended for general distribution and circulation, and sold at fixed prices per copy per week, per month, or per annum, to subscribers and readers

without regard to business, trade, profession or class.

"Official Newspaper" means a newspaper designated by the Public Service Commission, the Workmen's Compensation Board, or any other State department, commission, board, or officer for the publication of official notice or advertising, or by a resolution or election, by a board of directors or officers of any corporation or unincorporated association, or by a board of county commissioners, board of education, board of school directors, town, township, borough, or city commissioners, township supervisors, or a newspaper designated by an ordinance or resolution of a township, borough, city or municipal council, or city or county commissioners, for the publication of notices and statements required by rule, order, resolution, or ordinance of those lawfully constituted authorities, who are specially empowered by statute or custom to elect or designate an official paper or publication for disseminating official and public intelligence among the people of a particular township, town, borough, city, county, or municipality, or a subdivision thereof of this Commonwealth.

"Legal Newspaper" means "legal periodical," "official legal newspaper," or "official legal periodical," publishing legal intelligence, as designated by a rule or rules of court of any particular judicial district of this Commonwealth for the publication of legal advertisements and notices required by law, rule, order, or decree of court to be published in a legal newspaper, legal periodical, official legal newspaper, or official legal periodical, so designated by the rules of a court of record.

Class magazine or class newspaper means a printed paper or publication containing class, professional, trade, commercial, technical, scientific, educational, religious, financial, legal or other matter and intelligence, intended to be disseminated exclusively among subscribers or readers concerned or interested in the subject matters published.

Sharon Herald Co. vs. Mercer County, (1936), 200 A. 880.

Mateer vs. Borough of Swissvale, (1940), 335 Pa. 345.

Rhode Island

RHODE ISLAND GENERAL LAWS, 1938, Chap. 436, Sec. 20

Whenever it is required under this chapter that any notice or publication shall be published in a public newspaper, such newspaper shall be held to mean a public newspaper that has been regularly published for at least 6 months prior to the first publication of said notice, or a merged or consolidated public newspaper formed by the merger or consolidation of 2 or more public newspapers, one of which has been regularly published for at least 6 months prior to the first publication of notice.

South Dakota

SOUTH DAKOTA LAWS, 1939, Chap. 298, p. 375

Sec. 65.0508

No daily or weekly newspaper shall be considered a legal

newspaper for the publication of legal and other official notices unless the same, if a daily newspaper, be published five days or more each week and shall have a bona fide paid circulation of two hundred copies daily, or, if a weekly newspaper, shall have a bona fide paid circulation of two hundred copies weekly, and shall have been published in the English language in the county and shall have been admitted to the United States mail under the second class mailing privilege, for at least one year prior to the publication of such notices, and be printed either in whole or in part in an office maintained at the place of publication.

The consolidation or union of any two or more newspapers, any or all of which were before such consolidation legal newspapers as defined in this section, shall in no manner effect the legality of the newspaper formed by such consolidation, and the same shall be deemed to have complied with the requirements prescribed for a legal newspaper and to be a legal newspaper as above defined.

Texas

Texas Civil Statutes, 1935, Vol. I, Art. 28a

That whenever any law, city charter or ordinance, or any Act of the Legislature creating any independent school district or other municipal corporation, requires notice to be given of any act or proceeding, whether public or private or relating to Judicial, Executive or Legislative matters, by publication in a daily newspaper or by publication in a newspaper for a certain number of consecutive or successive days, the term "Daily Newspaper" or "Newspaper" shall be construed to include any newspaper published regularly on six days a week and otherwise complying with such law, charter, ordinance or legislative Act; and the term "Consecutive Days" or "Successive Days" or words of similar meaning shall be construed to mean consecutive or successive days in which such newspaper is published.

Utah

Utah Revised Statutes, 1933, Title 62, Chap. 1, Sec. 1

No newspaper shall be deemed a newspaper having general circulation for the purpose of publishing any notice, advertisement or publication of any kind required by law, unless it has a bona fide subscription list of not less than two hundred subscribers in this state, and shall have been published for not less than eighteen months, and shall have been admitted in the United States mails as second class matter for twelve months; Provided, that nothing in this chapter shall invalidate the publication in a newspaper which has simply changed its name or ownership, or has simply moved its place of publication from one part of the state to another, or suspended publication on account of fire, flood or unavoidable accident not to exceed ten

weeks; Provided Further, that nothing in this chapter shall apply to any county wherein no newspaper has been published the requisite length of time.

Vermont

VERMONT PUBLIC LAWS, 1933, Chap. 1, Sec. 24

When a notice is required to be given by publication in a newspaper, it shall mean a newspaper published in the county where the subject-matter is situated, pending or to be heard, or a newspaper published within the state which has a general circulation; and the court may in any case, in its discretion, cause such notice to be further published in a newspaper which circulates in the neighborhood of the persons interested; and whenever a notice of any kind is required to be given by publication in a newspaper prior to a certain date for a certain number of weeks successively, it may be given by an insertion prior to such date once a week, for the number of successive weeks required, either in a daily, semi-weekly or weekly newspaper; and, if such publication is in a daily or semi-weekly newspaper, such notice shall be inserted on the same day of each successive week.

VIRGINIA*

Whenever it is required by law to be published by any county, city or other municipality or municipal corporation, or by any municipal board or official board, or body, or office, or officials, or by any person, persons or corporations, any ordinances, resolutions, or notices or advertisements of any sort, kind or character by printing and publishing the same in a newspaper or newspapers, such newspaper or newspapers must in addition to any qualifications now required by law meet the following qualifications, namely: said newspaper or newspapers shall be entirely printed in the English language, shall have been entered as second class mail matter under the postal laws and regulations of the United States and shall have a list of bona fide subscribers voluntarily engaged as such, who have paid or have agreed to pay a stated price for a subscription for a definite period of time.

Washington

WASHINGTON REVISED STATUTES, 1932, Chap. 6, Title 2, Sec. 253-1

No newspaper shall be considered a legal newspaper for the publication of any advertisement, notice, summons, report, proceeding or other official document now or hereafter required by law to be published unless such newspaper shall have been pub-

*Signed March 1, 1940 by governor to take effect on and after June 26, 1940. Passed as S.B. 91; presented in Chap. 113, Acts of 1940.

lished in the English language continually (legal holidays and Sundays excepted) as a daily or weekly newspaper, as the case may be, in the city or town where the same is published at the time of the publication of such official document, for at least six months prior to the date of such publication, and shall be printed either in whole or in part in an office maintained at the place of publication: Provided, that in case of the consolidation of two or more newspapers such consolidated newspaper shall be considered a legal newspaper if either or any of the papers so consolidated would be a legal newspaper at the date of such legal publication, had not such consolidation taken place: Provided, further, that nothing in this section shall be construed to invalidate any publication in a foreign language prior to the taking effect of this act.

King County vs. Superior Court in and for King County, (1940), 199 Wash. 591.

West Virginia

West Virginia Code, 1932, Sec. 5851

All advertisements required to be made by the State of West Virginia, or any county, district, school district, city, town or village, or any political subdivision thereof or levying body, shall be published in a daily, tri-weekly, semi-weekly, or weekly newspaper or newspapers, as the case may be, of general circulation in the county wherein the publication is made, and representing one or both of the two major political parties in such county, and which shall have been published continuously at least once a week for a period of one year at the time of placing such legal advertising, and at a printing and publishing plant located in this State and capable of printing and publishing a weekly newspaper of general circulation and owned by the owner of such newspaper, except and unless there be no newspaper in that county affiliated with one of the two major political parties; Provided, That where any such newspaper succeeds to the field of a former established newspaper, it shall be eligible to publish such legal advertising from its inception.

Wisconsin

Wisconsin Statutes, 1937, Chap. 331, Sec. 331-20

No publisher of any newspaper in the state of Wisconsin shall be awarded or be entitled to any compensation or fee for the publishing of any legal notice, advertisement, or report of any kind or description required to be published by or in pursuance to any law or by order of any court unless such newspaper has all the requirements enabling it to be entered by the United States postoffice department as entitled to second class mailing privileges and has a bona fide paid circulation to actual subscribers of not less than three hundred copies at each publi-

cation, if in villages or in cities of the third and fourth class, and one thousand copies in cities of the first and second class, and further that such newspaper shall have been regularly and continuously published in such city and county for at least two years immediately before the date of such notice, advertisement, or report, providing that the two years' requirement shall not apply to papers in existence at the time of the passage of this act. A newspaper in the contemplation of this section is a publication appearing at regular intervals, which shall be at least once a week, containing reports of happenings of recent occurrence of a varied character, such as political, social, moral and religious subjects, and designed for the information of the general reader. Such definition shall include a daily newspaper published in a county having a population of five hundred thousand or more, devoted principally to business news and publishing of records, which has been designated by the courts of record of said county for publication of legal notices for a period of six years or more immediately prior to January 1, 1931. Mere change of name of newspaper does not create disqualification for publication of legal notices. Neither does change of its location from village to city in same county.

Wyoming

Wyoming Revised Statutes, 1931, Sec. 29-311

The publication of any legal notice, or of any printing or advertising required to be published under the laws of this state, shall be of no force or effect unless published in a newspaper which has been regularly issued at least once each week for a period of fifty two consecutive weeks prior to the date of the first publication of such notice or advertisement, which has a paid circulation of not less than five hundred and which has a page the size of not less than twelve inches by nineteen inches: Provided, however, that any paper having the status of a legal newspaper at the time of the passage of this act shall not be affected hereby. Provided, however, that the provisions of this section shall not apply in counties where no newspaper has been regularly issued for fifty two consecutive weeks, nor where there is but one newspaper in the county, nor in any county where no newspaper can meet the requirements of this article. L. '31, C. 85. Sec. 1. amending L. '97. C. 73. Sec. 3; R. S. '99. Sec. 1082; C. S. '10. Sec. 1077; C. S. '20. Sec. 1310.

III. ANALYSIS OF STATUTORY DEFINITIONS

Statutory Definitions

AT LEAST forty-three states have statutes defining a newspaper for legal purposes; but in general these statutes are neither uniform, complete nor satisfactory. For further guidance there are court decisions, official opinions and established practices. The statutory definitions touch upon many points, but no two are quite alike and they vary with local needs and conditions. Many seek to lay down general principles rather than to go into extensive detail. Yet some suffer from oversimplification or silence; others are long, complicated and ambiguous. Some were perhaps adequate when passed but have become obsolete or ineffective.

In all, some twenty-five specifications are listed among the statutory qualifications of newspapers competent to print public notices. Some occur more often than others and some are covered in blanket fashion by the fairly common requirement that such a newspaper must have (or be eligible to) second class mailing privileges. Some specifications overlap, but the importance of others is not always to be judged by the frequency or infrequency of their occurrence. For example, only thirteen of the forty-three states require that publication must be in English.

The principal statutory qualifications fall under four headings: nature of contents or purpose, second class mailing permit, bona fide or paid circulation, and age and frequency (or regularity) of publication. The once important specification of political affiliation is lacking in most instances. The twelve most common and most important provisions, in order of frequency, are: Minimum age of newspaper; waivers or exceptions; frequency or regularity of publication; printed or published locally, at least in part; general circulation; second class entry; bona fide circulation; paid circulation; contents or purpose; printed in English; minimum circulation; and format.

Occasional special provisions legitimize publications

otherwise unable to qualify. Similarly, exceptions are set up in the public interest or to avoid working needless hardships or injustices; but sometimes these seem to be at the expense of the real principles involved. In Wisconsin, statutory recognition is accorded a court and commercial newspaper, although it is not named. Other exceptions meet situations such as that where no newspaper is published in a county where a public notice is required. It may then be permissible for a newspaper of an adjoining county or of general circulation in the state to carry the notice.

Before considering the major statutory requirements in more detail, it would be well to review some of the recognized attributes of the genuine *news*paper. By specific provision or by clear implication a dozen statutes rightly emphasize the general news function. Unless this is so the publication is simply not a *news*paper in the accepted sense and does not deserve the name. Further, unless its news and editorial contents are of *general* interest, it is usually doubtful that a publication really qualifies in serving the public interest. Plausible claims are advanced for publications which look like newspapers but are not or, even if they have some of the essential attributes of newspapers, are of such limited or special interest as to lack a *general* following. This difficulty is compounded by the fact that the policies, the practices and the appeal of even the legitimate newspapers vary widely.

Difficulty also comes in borderline cases where publications serve some of the purposes of a legitimate newspaper but have limited facilities. If such newspapers are actuated by legitimate purposes and if their existence serves a real need, they deserve reasonable encouragement and support. In qualifying for the right to carry public notices, however, the burden of proof rests upon them and they are rarely justified in seeking exemptions from ordinary legal requirements in such matters.

Another major source of difficulty is the occasional publication which looks like a newspaper but which is mostly pretense. Its chief purpose is to pack its columns with commercial advertising, adding legal adver-

tising if it can. Such a paper may be given away, or it may have a nominal "subscription price" largely fictitious because no real effort is made to sell it to readers and thus establish a *paid* following.

Two examples illustrate these situations. In one case, all too typical, a small weekly with a paid circulation of about 600 was selected as one of three newspapers in its county to carry considerable important legal advertising. Its staff consisted of the editor-publisher and a reporter-advertising solicitor. Published in a remote corner of its county of 350,000 population, it was actually printed in an adjoining county. Yet it was designated as an official newspaper of *general* circulation for the *entire* county. Such a practice makes a farce of the principle underlying the public notice.

Another publication that began as a shopper decided to become a newspaper of general circulation. It improved its makeup, published a subscription price and began to carry more reading matter. It was even given some legal advertising in its county. A mortgage foreclosure action turned finally, however, on whether the notice carried in this publication was valid. The court held, in substance, that it was not a genuine newspaper. This was confirmed upon appeal because it had no news or editorial staff, its news was rewritten without credit from legitimate newspapers and its actual paid circulation consisted of two subscribers in another state. The facts showed clearly its spurious nature.

Several other kinds of publications have some of the attributes of real newspapers but are lacking in one or more essentials. It is questionable whether they merit full recognition as bona fide newspapers of general circulation. One is the official publication issued regularly as a municipal review or bulletin. Another is the class or trade journal catering to a special interest group. Admitting the legitimacy of their purposes, it is often doubtful whether the news or reading coverage they afford is sufficiently general or valuable to justify qualifying them for much legal advertising. Yet this is sometimes done.

There are also some seventy court and commercial

newspapers in the United States. These are devoted to court and legal news and cater almost wholly to attorneys, insurance and real estate brokers, chattel and personal loan agencies and public officials. They exist only in the largest cities, and their circulations are very limited. In one city of 300,000, for example, the local court and commercial newspaper has an admitted circulation of 550. Most of its advertising is legal advertising, and the little display advertising in its columns is confined largely to required periodical statements or to trade advertising.

Such a publication is useful both as a matter of record and information to the special interest group it reaches, and the regular newspaper is no substitute for it. It always puzzles the layman or the professional newspaper man, however, that courts or public officials can designate such class publications as *news*papers of *general* interest and circulation. They cannot even make the pretense of giving general news coverage and the fairly typical example cited above condemns them from the standpoint of *general* circulation. Granted that they reach professional men with special interests, it is fairly certain that the public or the individual whose rights are concerned may never see the legal notice appearing in such publications. It is in the public interest, therefore, that the law in many states specifies that legal notices shall be published in *news*papers with a bona fide general following. This qualification should be safeguarded and extended in that public interest.

The table given on Page 46 summarizes the more important and more frequent statutory specifications. The survey it represents is believed to be as extensive as any so far made in this field. Some individual items are listed even though the legal language is not clear. Where there is more than one statute, pertinent requirements are indicated as far as possible. The essential nature of the bona fide *news*paper having been treated above, discussion of other major characteristics found in the statutes follows.

Second Class Entry

It is surprising that only twenty-two states have helped to resolve the difficulty of defining a newspaper by simply requiring it to have (or to be eligible for) a second class mailing permit under the postal regulations. To be sure, the regulations are lengthy, complicated and need frequent interpretation. But ordinarily the inclusion of such a blanket requirement would greatly simplify and shorten the language needed for a statutory definition and provide automatically the desirable and necessary qualifications. As to why this example has not been followed by others, two answers seem possible: Present definitions are thought adequate, or the postal regulations are considered more exacting than is necessary for public notices.

Nevertheless, the postal regulations offer a ready way out of the difficulty. They put the burden of proof clearly on the publication. It need not even have or use a second class mailing permit; the test is whether it can qualify for one. As suggested, this would automatically provide, for most purposes, safeguards as to the nature and purpose of the publications; it would exclude mere advertising sheets, giveaway papers of doubtful character and those with merly nominal circulation rates; and it would establish a uniform yardstick by which to measure a legitimate list of subscribers.

Statutes invoking such a test must distinguish, of course, between orthodox newspapers and other publications devoted to literature, the sciences, the arts or some special industry. All of these must have legitimate lists of subscribers. Aside from other differences, such statutes would probably serve merely to draw the line between other periodicals and bona fide *news*papers. Occasional public notices, like a call for a stockholders' meeting, are seen in *Time* and other periodicals. Ordinarily, however, such publication would be ineffectual and unsatisfactory even if it were legal.

There is much to be said, therefore, in favor of the inclusion of this requirement. If a publication claiming to be a *news*paper can meet this test there can be little doubt of its right to be so recognized. But if a publica-

tion claiming to be a newspaper cannot qualify as such for second class mailing privileges, it is questionable. Of course, the ability to meet this test is not alone sufficient. The further tests of age and regularity of publication, for example, are of great value. In special cases, too, it may be proper and even necessary to make exceptions. This can be determined only by individual circumstances.

Bona Fide Circulation

Despite occasional claims that the essential element in circulation is coverage and not whether it is paid, the willingness of the subscriber to pay for a publication remains the acid test. There is no substitute for such circulation.

There are many types of circulation, both paid and unpaid. There is bulk as against class circulation. Some publications, such as shoppers, blanket the community or part of it. Other publications are, in effect, given away, even though their distributors may try to collect small sums from householders covered. Some publish subscription and single copy prices but make no serious effort to develop this revenue. Still others charge only a nominal circulation price, say 25 cents a year for a weekly. On its face this is "paid" circulation, but its real value is subject to proof. Other publications advertise substantial subscription prices but reduce them by clubbing and premium offers. Fraternal and other such publications show subscription prices which are included in annual dues.

The words written into the statutes most often as tests of circulation are "general," "bona fide," legitimate," "regular" and "paid." For the most part their meaning and intent seem self-evident. With respect to "general," it is clearly intended that for the purpose of the public notice the qualified publication should have a following which is, in effect, the general public or at least a fair cross-section of the community in which the notice must be published. The reasonableness of such a requirement is obvious. As to "bona fide," the implication is not upon the size of the circulation or even, necessarily, whether it is paid, but that the circulation

claims in behalf of the publication are made in good faith and are susceptible of reasonable proof based on accepted standards.

Despite the argument for "paid" circulation there is no universal agreement upon a satisfactory definition for it. The postal requirements, for example, differ somewhat from those of the Audit Bureau of Circulations, and publishers and others differ honestly as to definitions. Still, by all sound standards, paid circulation represents the cream of the reading public. Even the publishers of giveaway publications would not spurn circulation revenue if they could collect it without suffering otherwise. If circulation is to be evaluated properly, it is not enough merely that a publication is issued or that it has been published regularly for some time. For the present purpose it is vital that the newspaper reach a substantial part of the public. It is vastly better if the circulation or following is regular or habitual, especially where the reader cares enough about it to pay a substantial price for it. No more valuable type of circulation exists; yet only nineteen states require it in their definitions.

Age and Regularity

There is good reason for the general occurrence of the requirements of minimum age and regularity of publication of a newspaper. These are the most common statutory provisions. A newspaper which has been in continuous existence for a reasonable length of time may be assumed to have a public regularly depending upon it as a reliable source of information and, therefore, to be an important means of communication within the community.

Published or Printed Locally

An effective guarantee against opportunist or fly-by-night publications is offered by requirement that the newspaper be published and/or printed locally. Through political or other connivance it happens occasionally that non-local sheets appear largely for the sake of revenue from official and legal advertising. Many such publications never really establish them-

selves, develop no substantial following, never have the real public interest at heart and are transient in character. They often work to the disadvantage of long established newspapers.

A small midwestern weekly supplies a case in point. It had long been published in its community and invariably received much of the local legal advertising. A new political administration, however, turned the bulk of it over to a new fly-by-night sheet. The paper was printed elsewhere, contained little local news and had no genuine interest in the community.

The fault of the original newspaper was that its politics were of the wrong hue. Its publisher had lived in his town for years, had spent much of his life and his newspaper's effort working for civic betterment. Suddenly cut off from an important source of revenue, he faced the necessity of operating at a loss.

This is a risk which private capital must always take; but the rub here was that local public business, previously served acceptably by a local enterprise, was, in effect, turned over to outsiders. If the statutes had required the second publication to be printed locally "in whole or in part" or had held that it must have been published continuously for a reasonable minimum period, or both, the legitimate publisher would have been protected. What is much more important, the public interest would have been better served. The local publisher found in this case that he had no legal redress. It is doubtful that any publisher can claim a vested right in such matters, but the very nature of the well established newspaper would seem to endow it with a certain priority as a matter of public interest. Any other policy tends to defeat the important purposes underlying the public notice.

The statutes cover a considerable range of minimum periods. They run from six months to five years, the average being about a year and a half. Mostly, however, the laws require the publication to have been in *regular* and *continuous* publication (or admitted to second class entry) for the minimum period given *prior* to being permitted to carry legal advertising. Allowance is made for interruptions such as fire, floods, strikes

Table of Statutes Defining the Newspaper

	1	2	3	4	5	6	7	8		9	10	11	12
Alabama	x		x				x	x	1	Yr.			x
Arizona	x	x		x	x				1	Yr.	x		x
Arkansas	x	x[1]	x	x	x[2]				1	Yr.	x	x	
California		x	x	x	x			x	1	Yr.	x		
Colorado	x		x					x	1	Yr.[3]	x		x
Connecticut			x[4]					x					
Florida	x	x	x[5]		x[6]		x				x		
Georgia	x[7]			x					2	Yrs.	x		x
Idaho			x					x	18	Mo.[8]			x
Illinois		x[9]	x				x	x	6	Mo.	x		
Indiana								x	5	Yrs.	x		
Iowa	x		x	x	x				2	Yrs.	x		x
Kansas	x		x					x	1	Yr.			x
Kentucky				x	x			x					x
Louisiana		x	x[10]			1000[11]	x	x	1	Yr.	x		
Maine	x						x	x					x
Maryland[12]	x	x					x		2	Yrs.	x		x
Michigan	x	x		x	x		x	x	1	Yr.	x		x
Minnesota	x	x[13]			x	240	x	x			x	x	
Mississippi									1	Yr.			x
Missouri	x		x	x	x				1	Yr.	x		
Montana			x					x	1	Yr.	x		
Nebraska				x		300		x	1	Yr.			x
Nevada			x					x	1	Yr.	x		x
New Jersey	x						x		2	Yrs.	x		x
New Mexico	x		x		x			x	6	Mo.	x		x
New York								x	1	Yr.			
N. Carolina	x		x		x				6	Mo.	x		x
N. Dakota				x		150[14]		x[15]	1	Yr.	x	x	x
Ohio	x	x[16]	x	x[17]	x	600[18]	x	x	2	Yrs.	x	x	x
Oklahoma					x				2	Yrs.	x		x
Oregon			x	x[19]	x	200[20]			1	Yr.	x	x	x
Pennsylvania	x	x			x				6	Mo.	x	x	x
Rhode Island									6	Mo.	x		
S. Dakota	x			x	x	200	x	x	1	Yr.	x		x
Texas			x					x	1	Yr.	x		x
Utah	x		x	x		200[21]			18	Mo.			x
Vermont			x					x					x
Virginia	x			x	x		x						
Washington							x	x	6	Mo.	x		x
W. Virginia			x					x	1	Yr.	x		x
Wisconsin	x	x		x	x	300[22]		x	2	Yrs.	x		x
Wyoming					x	500			1	Yr.	x	x	x

KEY: 1, Second Class Entry; 2, Contents or Purpose; 3, General Circulation; 4, Bona Fide Circulation; 5, Paid Circulation 6, Minimum Circulation; 7, Printed in English; 8, Published Locally; 9, Minimum Age; 10, Frequency and/or Regularity; 11, Minimum Format; 12, Waivers or Exceptions.

(N.B.—Data from latest available sources, including 1939, but subject to correction.)

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[1] An average of 40% news matter. [2] At least 50%. [3] For weekly; 6 mo. for daily. [4] Specifies "substantial." [5] "For sale to the public generally." [6] By implication? [7] Statute says "published and *mailed*." [8] One year if a daily. [9] Specifies "secular." [10] "Throughout the parish." [11] Refers to semi-weeklies. [12] Provisions limited to Prince George's County. [13] News must be 25% local. [14] "Regular and continuous subscribers." [15] "At least one page" actually printed locally. [16] "An average of 40% news matter." [17] "By at least 50% thereof being paid for." [18] And up to 3,000; concerns insurance notices. [19] Paid for at least a year. [20] Minimum in county itself. [21] In Utah itself. [22] In villages; 1,000 in cities.

and, in Oklahoma, even for the foreclosure of the publisher's mortgage. But such exceptions are limited in time and were enacted more to safeguard the technical validity of public notices than to protect the newspaper.

The importance of insisting, in the public interest, upon both the regularity and continuity of publication should be self-evident. A newspaper appearing irregularly or lapsing for long periods can hardly claim to have a following of habitual readers. The proper length of the minimum period for regular and continuous publication may be debatable, but the principle itself is not. Local circumstances may determine the requisite time. Six months may be too short but five years is normally too long. The former might open the door to opportunist publications where the latter might give undue protection to vested interests. The public interest should be the chief criterion.

Less Common Tests

The less common statutory qualifications can be dismissed briefly. They are probably so naturally a part of the bona fide newspaper as to be assumed, or they are inconsequential. The former is true, for example, of the requirements of a fixed name or title, date of issue and serial number. The latter might apply to an effort to write eligibility for membership in a state or national newspaper association into the law, since such eligibility would probably be automatic if the publication were otherwise a bona fide newspaper.

When foreign language newspapers were more numerous, the English language requirement was of practical importance. This issue rarely arises now since the World War and post-war changes wiped out many foreign language newspapers. In twelve states, however, the old requirement still stands. One variant of it was to permit the publication of some notices in foreign language newspapers provided the notice itself was in English.[1]

Special Cases

The statutes provide for various special conditions. Some make exceptions qualifying publications other-

[1] See Nebraska, Sec. 20-523.

wise ineligible, some mark a transition stage and some show signs of political or other connivance to extend the business of legal advertising to otherwise doubtful publications. A few examples will illustrate certain special cases.

Equality. Colorado alone meets an issue which plagues some states by providing that unless otherwise indicated, "daily newspapers, semi-weekly newspapers and weekly newspapers shall all be equally competent as the means for the publication of all legal notices and advertisements."[2] This equality of competency, as it is called, may not be feasible for all states and certainly not for all types of public notices; but sometimes such a provision has merit.

Waivers. Some states, as indicated, note exceptions to the requirement of continuous publication. This is done to protect the newspaper against emergency conditions and, more importantly, to validate particular public notices whose stated publication may be interrupted. Similarly, where a public notice must appear in a newspaper published locally, some alternative must be provided if no such newspaper exists. The Kansas statute meets both contingencies by providing[3]

> that nothing in this act shall apply to counties within which no newspaper has been published the requisite length of time; provided, that all legal publications heretofore made within the last year which has [*sic!*] on account of flood, fire or other unavoidable accidents, suspended publication for a period not exceeding ten weeks, are hereby legalized.

Such exemption periods vary somewhat, some states providing that they shall not exceed two weeks. The Oklahoma statute goes farther than others in its waiver clause:[4]

> Provided that nothing herein shall invalidate the publication, in a newspaper which has moved its place of publication from one part of the county to another part without breaking the continuity of its regular issues for the requisite length of time or the name of which may have been changed when such change of location may have been made;
>
> Provided further, that failure to issue or publish such news-

[2] Sec. 5398.
[3] Sec. 64-101.
[4] Tit. 25, Ch. 4, Sec. 102.

paper for a period of fourteen days on account of inability so to do arising from fire, accident or other unforeseen cause, or by reason of the pendency of mortgage foreclosure, attachments, execution or other legal proceedings against the type, presses or other personal property pertaining to such newspaper, shall not be deemed a failure to maintain continuous and consecutive publication as required by this Section, nor invalidate the publication of a notice otherwise valid;

And, provided further, that nothing herein shall apply to counties wherein no newspaper has been published the requisite length of time;

Provided that nothing herein shall affect legal publications in newspapers heretofore published, or such newspapers as may hold contracts with County Commissioners to do county printing;

And, provided further, that no provision herein shall in any way affect newspapers that have become legal newspapers under existing statutes.

Occasional circumstances clearly require some exceptions, but too many waivers may nullify the real ends to be served. No statute can hope to anticipate all of the special conditions that may arise and the exceptions are best confined to principles rather than details.

Special Definitions. Another method of providing for exceptions is to enact special definitions of a newspaper for legal purposes. The Indiana statute, for instance, explains that[5]

for the purpose of this act, whenever reference is made to a political newspaper or to any newspaper representing any political party such terms shall be construed to mean a newspaper which has declared its political faith or adherence by editorial comment or otherwise, and which is generally known to profess allegiance to some designated political party.

The Wisconsin statute, as noted, makes special provision for a Milwaukee court newspaper without naming it:[6]

Such definition shall include a daily newspaper published in a county having a population of five hundred thousand or more, devoted principally to business news and publishing of records, which has been designated by the courts of record of said county for publication of legal notices for a period of six years or more immediately prior to January 1, 1931.

It was said that only one Wisconsin publication met this description.

[5] Sec. 49-704.
[6] Sec. 331-20.

Production. Like the Oklahoma statute cited, that of Minnesota goes into great detail in defining a newspaper "qualified as a medium of official and legal publications."[7]

It provides that it shall be issued at least once a week and, if a daily, six days a week, holidays excepted. It must be "in column and sheet form equivalent in space to at least 450 running inches of single column, two inches wide." It even covers the personnel and equipment by specifying, "It shall be issued . . . from a known office, established in such a place for publication and equipped with skilled workmen and the necessary material for preparing and printing the same." It stipulates also that "the press work on that part of the newspaper devoted to local news of interest to the community which it purports to serve shall be done in its known office of publication except in cities of the first class when the press work may be done elsewhere within the same city."

Contents and Format. Some states go well beyond a general requirement of the primacy of news and editorial contents. The Minnesota law specifies that a qualified newspaper must devote 25 per cent of its news columns to local news of interest to the community "and may also contain general news, comment and miscellany, and must not wholly duplicate any other publication, and be not entirely made up of patents, plate matter and advertisements."[8] That of North Dakota provides that such a newspaper "must contain at least four pages of five columns to the page, said columns to be not less than eighteen inches in length and twelve ems pica in width, with not less than four columns of reading or news matter; or must contain eight pages of four columns to the page, or its equivalent, the columns thereof to be not less than twelve inches in length."[9] An Ohio statute requires that the contents shall average at least 40 per cent news and reading matter.[10]

The Pennsylvania law likewise specifies a minimum

[7] Sec. 10935.
[8] *Ibid.*
[9] Sec. 3173.
[10] Sec. 5704-2.

of four pages but attempts no quantitative minimum as to news and editorial contents. Instead, it goes into considerable detail as to the nature of the contents, saying[11]

> "Newspaper" means a printed paper or publication, bearing a title or name, and conveying reading or pictorial intelligence of passing events, local or general happenings, printing regularly or irregularly editorial comments, announcements, miscellaneous reading matter, commercial advertising, classified advertising, legal advertising and other notices. . . .

Minimum Circulation. Ten states attempt to fix a numerical minimum for circulation. So many factors affect this, however, that it is difficult to arrive at any formula which is both fair and effective and can be applied equitably to weeklies, semi- and tri-weeklies or dailies. Such a quantitative definition is harder to formulate than a qualitative one. Pennsylvania alone provides that any competent publication shall have a legitimate list of subscribers *without regard to number*[12]

Examination of the statutes plainly shows their great variety. Some are remarkable for their brevity and others for their length; some are fairly adequate, others deficient. Yet brevity does not mean inadequacy any more than length is a guarantee of efficacy. Shorter statutes may afford more protection than some which go into great detail but suffer from omissions or other weaknesses. And a state may have several statutes, some of them exacting but limited, others too loose to have real value.

Ohio, for example, has a brief section loosely defining "a newspaper company"[13] which declares that "any . . . newspaper, magazine or other periodical publication is a newspaper within the meaning of this act." This would seem to throw the doors open to doubtful claims. But the state also has a longer statute of some merit,[14] adopted in connection with a law governing the publication of delinquent realty and personalty lists. It af-

[11] Tit. 45, Ch. 1, Sec. 3.
[12] *Ibid.*
[13] Sec. 6319-2.
[14] Sec. 5704-2.

fords an unusually detailed definition of what constitutes a newspaper and what comprises general circulation. It applies to two specific sections which it amended and to "any other sections of the General Code, to which the same are applicable unless otherwise specifically defined therein." But the state attorney general has held that "because of the circumstances of its enactment" the new section is not mandatory except in tax sale cases. Any benefit that might have come from its provisions is thus lost in the absence of a court decision or enabling legislation.

Among the states whose codes contain relatively brief but fairly good definitions of a newspaper are Arizona[15] and Florida.[16] States whose statutory definitions run to considerable length include Minnesota,[17] North Dakota,[18] Oklahoma[19] and Wisconsin.[20] Besides these statutes practically all of the states have others which provide for or relate to the publication of legal advertising or public notices with more or less reference to newspapers, often with particular specifications.

The Arizona definition cited above says:

> For the purposes of this chapter, and unless otherwise required by the context, "newspaper" shall mean a publication regularly issued for the dissemination of news and intelligence of a general and public character at stated short intervals of time from a known office of publication, bearing the dates of issue and numbered consecutively, and not designed primarily for advertising, or for free circulation, or for circulation at nominal rates, but having a bona fide list of paying subscribers; and shall not apply to any publication which, for at least one year, has not been admitted to the United States mails, as second class matter, under the act of Congress approved March 3, 1879.
>
> No contract shall be awarded to any publisher of a newspaper at any public bidding for publishing any notice or matter, the cost of which is paid from public funds, unless said newspaper is published within the state of Arizona and the publisher thereof files an affidavit with his bid showing that his newspaper falls within the definition hereinbefore set forth.

Omitting prolix details, the Florida provision is:

[15] Sec. 2744.
[16] Sec. 4901.
[17] Sec. 10935.
[18] Sec. 3173.
[19] Tit. 25, Ch. 4, Sec. 102.
[20] Sec. 331-20.

Whenever by legislation a publication or notice in a newspaper has been or is directed or permitted . . . the rule of interpretation is and has been, a publication in a paper printed and published periodically once a week or oftener, wholly or in large part in the English language, entered or qualified to be admitted and entered as second class matter at a post office in the county where published, for sale to the public generally, available to the public generally for the publication of official or other notices and customarily containing information of a public character or of interest or of value to the residents or owners of property in the county where it is published, or of interest or value to the general public.

The Wisconsin statute is not only longer but makes a somewhat different approach to the definition. Except for the provision for the court newspaper already cited, it follows:

No publisher of any newspaper in the state of Wisconsin shall be awarded or be entitled to any compensation or fee for the publishing of any legal notice, advertisement, or report of any kind or description required to be published by or in pursuance to any law or by order of any court unless such newspaper has all the requirements enabling it to be entered by the United States post-office department as entitled to second class mailing privileges and has a bona fide paid circulation to actual subscribers of not less than three hundred copies at each publication, if in villages or in cities of the third or fourth class, and one thousand copies in cities of the first and second class, and further that such newspaper shall have been regularly and continuously published in such city and county for at least two years immediately before the date of such notice, advertisement, or report, providing that the two years' requirement shall not apply to papers in existence at the time of the passage of this act. A newspaper in the contemplation of this section is a publication appearing at regular intervals, which shall be at least once a week, containing reports of happenings of recent occurrence of a varied character, such as political, social, moral and religious subjects, and designed for the information of the general reader. . . . Mere change of name of newspaper does not create disqualification for publication of legal notices. Neither does change of its location from village to city in same county.

Space does not permit further illustration; but enough has been shown to prove that one great cause of confusion is that the codes are inconsistent as well as inadequate. The only real solution is a sound basic definition that will meet general needs and outline general policy, followed by some uniformity in individual applications to various kinds of public notices. To accomplish this would require overhauling the present

statutes and periodic check-ups. Such a program would help to end much of the present confusion, reduce inconsistencies and avoid the accumulation of legal deadwood that clutters the codes everywhere. In the face of customary legislative inertia and the opposition of special interests, no sudden realization of such a Utopian program is likely. But the situation continues to cry loudly for honest, intelligent and determined attention.

IV. JUDICIAL DEFINITIONS

Judicial Definitions

NUMEROUS cases afford definitions of what a newspaper is as determined by the courts of many states. Various illustrative cases will be cited to show the attitudes taken by the courts as well as the difficulties involved. Despite a lack of uniformity or agreement, certain general tendencies have appeared. Like the statutory definitions previously analyzed, these judicial definitions usually have grown out of matters affecting or involving public notices or so-called legal advertising.

In general, such decisions have centered around four major points. These include definitions of "newspaper," of "general" circulation, of "paid" circulation, and of the contents of a newspaper. A number of miscellaneous points are dealt with in addition.

Newspaper. Judicial decisions as to what constitutes a newspaper have had both positive and negative aspects. Some, that is, have specified what a newspaper of general appeal must be in order to qualify for stated purposes, while others have held, negatively, that it need not or must not possess certain characteristics.

One ruling cited here is that in *Crowell vs. Parker, 22 R.I., 51,* (1900),* in which the *Real Estate Register and Rental Guide* was held not to be a newspaper of general circulation. The publication was described as one largely devoted to real estate transactions and the court ruled that it was not a newspaper in which notices of sale of real estate could be published legally.

* Indicates year.

Part of the decision is quoted because it touches upon both the basic purpose of publishing such notices and because of the view on newspapers:

The primary purpose for the printing of legal advertisements and notices of sale of property under orders of court is to give to the notices the widest publicity available, and therefore the definition of a newspaper within the meaning of such statute is to be taken in its popular sense, which is one to which the general public would resort in order to be informed of the news and intelligence of the day, and which is published at stated intervals and carries reports of those happenings of general importance and interest to the ordinary individual.

A different attitude was taken in an Ohio action in which the court considered a newspaper and its purposes in *Bigalke vs. Bigalke, 19 C.C. 331* (1899). On that occasion the court held:

A paper may be devoted primarily to religion and to religious views and yet may give general news of the day. That makes it a newspaper.

This case turned on whether the Cleveland *Daily Record* was a newspaper under the law. The court concluded that it was.

Two brief general definitions are also pertinent here. They follow:

Lynch vs. Durfee, 101 Michigan, 171, (1894).

a newspaper . . . means . . . a sheet of paper printed and distributed at short intervals for conveying intelligence of passing events; a public print that circulates news, advertisements, proceedings of legislative bodies, public documents, and the like.

46 Corpus Juris., 18

Newspapers are of so many varieties that it is next to impossible to give any brief definition that will include and describe all kinds of newspapers. In ordinary understanding a newspaper is a publication, usually in sheet form, intended for general circulation, and published regularly at short intervals, containing intelligence of current events and news of general interest.

A Florida supreme court definition of newspaper was invoked in another Ohio case that was carried to the Ohio supreme court, *State ex rel. Stevens vs. Lorain Democrat Co., et al., 22 O. D.,* 267 (1912) and affirmed in *87 O.S., 467.* The Ohio supreme court quoted with approval the Florida definition rendered in *State, ex rel. vs. Rose, Judge 93 Florida, 1018. 114 So. 373* (1927) as follows:

The term "newspaper" as used in our constructive service

statute must have reference to some publication appearing at daily or weekly intervals, reporting the news or happenings of local or foreign interest, or both, such as social, religious, political, moral, business, professional, editorial, and other kindred subjects intended for the information of the general reading public.

In commenting upon the Florida definition, the Ohio court declared, "The foregoing citations as well as other cases fully support such statement."

In *Baily vs. Myrick, 50 Me. 171, 181* (1860), the following is given:

> The word "newspaper," as used in an officer's return, should be construed as synonymous and equivalent to the words "public newspaper," as used in a statute requiring a notice to be given in such newspaper, since the word "newspaper" necessarily implies that it is public.

Similarly, in *Williams vs. Colwell, 18 Misc. Rep. 399* (1896), it was held:

> A newspaper is a paper or publication conveying news or intelligence—a printed publication issued in numbers at stated intervals, conveying intelligence of passing events. The term "newspaper" is popularly applied only to such publications as are issued in a single sheet, and at short intervals, as daily or weekly, so that a daily mercantile journal, which publishes general news relating to mercantile matters, proceedings of courts, stock markets, and financial affairs, is a newspaper within Code Civ. Proc. par. 1678, authorizing notices of foreclosure sales to be published in newspapers.*

Other pertinent decisions follow:

Hanscom vs. Meyer, 60 Nebr. 68, (1900).

> It is difficult, if not impossible, to determine with clearness and exactness where the line of demarcation should be drawn between a newspaper in a legal and common acceptation of the term and the numerous publications devoted to some special purpose, and which circulate only among a certain class of people, and which are not within the purview of statutes requiring publication of legal notices in some newspaper. The daily and weekly newspapers common to all parts of the country, of general circulation among the people, without regard to class, vocation, or calling, devoted to the gathering and dissemination of news of current events of interest to all, and usually espousing and advocating principles of some political party with persistency, are, without doubt, newspapers within the meaning of the statute. On the contrary, many publications, such as literary, scientific, religious, medical and legal journals, are obviously for but one class of the people—and that class always but a small part of the entire public—are not newspapers within the

* See also *Rev. Laws Mass. 1902, 88, C8 par. 5, subd. 13.*

legal and ordinary meaning of the word, and it would be manifestly unjust, as well as against the letter and spirit of the law, to recognize such publications as proper for the advertisement of legal notices; the object in all cases being to give wide and general publicity regarding the subject of which notice is required to be published. The paper in question partakes, in a degree of the characteristics of each of the two classes mentioned. If, however, it has the distinguishing features required to make it a newspaper as ordinarily defined, the fact that it also makes a specialty of some particular class of business, and conveys intelligence of particular interest to those engaged in such business, will not thereby deprive it of its general classification as a newspaper within the meaning of the statute.

Hull vs. King, 38 Minnesota, 349 (1800).

"Newspapers are of so many varieties that it would be next to impossible to give any brief definition which would include and describe all kinds of newspapers." (*Beecher vs. Stephens, 25 Minnesota Reports*, 146). It would therefore be unsafe to attempt to give any definition of the term except the very general one that, according to the usage of the business world, and in ordinary understanding, a newspaper is a publication, usually in sheet form, intended for general circulation, and published regularly at short intervals, containing intelligence of current events and news of general interest. . . . But, if a publication contains the general and current news of the day, it is none the less a newspaper because it is chiefly devoted to the dissemination of intelligence of a particular kind, or to the advocacy of particular principles or views. Most newspapers are devoted largely to special interests, political, religious, financial, moral, social, and the like, and each is naturally patronized mainly by those who are in accord with the views which it advocates or who are most interested in the kind of intelligence to which it gives special prominence. But, if it gives the general current news of the day, it still comes within the definition of a newspaper.

McDonald vs. Shreveport Mutual Building Association, 178 La. 645 (1933).

Under the decisions of various state courts, the general rule has been formulated that, even if a publication is devoted chiefly to a particular class, profession, trade, or calling, it will not be deprived of its character as a newspaper, if it also devotes its columns to the dissemination of news that is of importance and interest to the general public.

30 Ohio Juris., section 2.

In order to fulfill the terms of the law of notice, the court or officer must direct that the notice be inserted, for the statutory time, in some paper printed and circulated for the dissemination of news, but it is not essential that, to answer the description, the paper shall be devoted to the dissemination of news of a general character. It may, with equal propriety, be published

in a paper devoted exclusively to the discussion of religious, legal, commercial, or scientific topics, and the diffusion of knowledge touching special matters within its limited sphere, as in a public journal, the columns of which are open to news of a general character. It may be a religious newspaper, a commercial newspaper, a legal newspaper, or a scientific newspaper or a political newspaper. A paper may be devoted primarily to religion and to religious views, and yet may give general news of the day. That makes it a newspaper.

57 N.W. 563; 24 L.R.A. 409; 29 Cyc. 693, (1894).

A newspaper in the ordinary acceptation of the term is a publication in sheet form, intended for general circulation, published regularly at short intervals, and containing intelligence of current events of general interest. It follows from this definition that if a publication contains the general current news of the day, it is none the less a newspaper because it is devoted primarily to special interests, such as legal, political, religious, mercantile, or sporting.

Board of Com. vs. Chaplin, 5 Wyo. 74 (1894).

An official newspaper of a county is one in which the public acts, resolves, advertisements, and notices are required to be published.

45 Minn, 27, 28, (1890).

The term "daily newspaper," in its popular sense, means a paper which, according to its custom, is published six consecutive days in each week.

General Circulation. Apart from all other questions raised, perhaps none has been more important than what constitutes *general* circulation. Admittedly it need not be blanket circulation, i.e., reaching practically every home or adult reader in the community. Conversely, blanket circulation itself under some circumstances does not necessarily qualify a publication as being a newspaper if it is otherwise lacking. But if a newspaper qualifies in all other respects, at what point would it cease to be eligible to carry official public notices in terms of a specific statute because its circulation was not "general" enough? Stated another way, when is its circulation sufficiently "general" to enable it to qualify for this purpose?

To illustrate, by what justifiable stretch of the imagination can two newspapers, one a weekly with a circulation well under 1000, and the other a class daily with about 600 circulation, make such a claim in a county of more than 350,000 population? This county contains a

large city with three dailies having a combined local circulation of about 200,000, besides other local weeklies and class publications.

In this same community is a giveaway sheet catering to one section of the city only. Its circulation of about 6500 is limited strictly to the one neighborhood. In some ways, this is much more than "general" circulation. But this publication cannot qualify for Second Class Mailing privileges because it is basically, and admittedly, an advertising sheet and because it is not a genuine newspaper of general circulation for that city or county by any valid test. Yet, it, too, gets legal advertising.

Just what, then, does "general" mean? *Webster's Unabridged Dictionary* gives ten definitions for it. The word is used in the sense of common or many, of general or all or nearly all, and universal or almost without exception. Similarly, it is opposed to local, restricted, narrow, particular, special and specialized, among others. Both generalizations are significant. Of the specific definitions given by *Webster*, four seem particularly pertinent here:

1. Of or pertaining to the whole of a body, society, or organization, or the like; held throughout or for the whole or in every division; not local; as a *general* election; . . .
2. Pertaining to, affecting, or applicable to, each and all of the members of a class, kind, or order; universal within the limits of the reference; as a *general* law.
5. Pertaining to, affecting or applicable to, many or the greatest number of persons, cases, or occasions; prevalent; usual; extensive; . . .
6. Of or pertaining to a heterogeneous or miscellaneous group; broad; catholic; not special or specialized.

The first is cited as the basic or generic definition, but the fifth, in particular, and the sixth, to a considerable extent, are especially applicable to the word with reference to circulation in the accepted sense among publishers, circulation men and others having to do with the more numerous standard types of publications. Courts and lawmaking bodies, however, have not adhered very closely to these definitions.

Some of the findings of the courts are shown in the references that follow. What is described as the lead-

ing case decided by the Indiana courts on this subject is:

Lynn vs. Allen, 145 Indiana 584 (1896)

There is no doubt that where a publication is devoted purely to a special purpose it would be unfit as a medium to reach the general public. A medical, literary, scientific or legal journal is professedly for but one class, and that class but a comparatively small part of the whole population, and it would be manifestly unjust as well as against the letter and spirit of the statutes to use such a journal.

Yet despite this sweeping and seemingly unqualified statement, the court in this instance held that a daily newspaper devoted primarily to the news of the courts and other legal news was a newspaper of general circulation.

Another Indiana ruling supporting the one above was handed down in *Ruth vs. Ruth, 39 Ind. App. 290* (1906). In this instance the court said:

A newspaper in the public acceptation of the word is a publication issued at regular stated intervals, containing among other things the current news. The general circulation of a newspaper is necessarily comparative. No fixed number of subscriptions is necessary to constitute general circulation.

With due respect to the court, such a conclusion is obviously unsound in part. When the court states that the newspaper contains "among other things the current news," it implies that such news is, or may be, only incidental. When and if this is true of any publication it ceases to be a genuine or bona fide *news*paper by any professionally valid test.

In the Ohio case of *State, ex rel. vs. Urner, 127 O.S. 84, at p. 89* (1933), the court upheld the contention that the *City Bulletin*, published in Cincinnati, met the test of general circulation. Here the court said in part:

It therefore now appears to the court that the periodical in question contains news and happenings of local and general interest, social, political, moral, business, professional and educational, intended for the information of the general reading public of Cincinnati. . . .

In another Ohio case, *Ambos vs. Campbell, 40 O.A. 346* (1931), it was held:

3. Newspaper may be of "general circulation" in county within statute requiring publication of notice concerning annexation petition, although circulation need not consist exclusively of paid subscribers. (Section 3520, Ohio G.C.)

4. Newspaper with partly unpaid circulation of over 10,000, extending throughout nearly every section of county, held newspaper of "general circulation" in county within statute requiring publication of notice concerning annexation petition. (Section 3520, Ohio G.C.)

Here again the court was of the opinion that, "As we understand the law, it is that, for a newspaper to be regarded as a newspaper of general circulation within the county, such circulation need not consist exclusively of paid subscribers; . . ."

The importance of insuring that the newspaper in which certain kinds of public notice appear is of general circulation in order to validate the legal proceedings involved is borne out by an Ohio case. In this, *Craig vs. Fox, 16 Ohio 564* (1847), it was held that:

On a motion to confirm a sale, the court has discretionary power; and though the letter of the statute may have been complied with in giving notice of sale, yet if the court is satisfied the notice was published in a paper not of general circulation in the County, it may refuse to confirm the sale.

In this instance, the court also ruled that a paper circulating principally in Cincinnati was not of general circulation in Hamilton county of which Cincinnati is the county seat. Since present day Cincinnati takes in most of the county, it would appear to be debatable whether a court today would affirm this ruling if a new and similar case arose. Any pertinent statutory changes, of course, would have to be taken into account also.

In *State ex rel. Stevens vs. Lorain Democrat, 22 O.D. 267*, cited elsewhere,* the court seemingly gave another interpretation when it ruled that "general," referring to circulation

in the main refers to the character of the paper and the purpose of its publication. Whether designed to represent some special interest . . . or whether designed for circulation as the disseminator of intelligence of passing events, local and general news and items of common interest.

Taken at face value, this would seem to make the character of the publication and its purpose the tests for general circulation rather than the actual nature and volume of the circulation itself. While this is im-

* See p. 55.

portant, it can hardly be the supreme test. Carried to the extreme it might appear to qualify a publication whose backers hoped and intended that it should have wide circulation where it actually had only a handful in a large city. This falls of its own weight, yet the same distinction is reported in *Huffman vs. State, 20 Ohio Law Abs. 378* (1935) (qv).

An Illinois case, *Eisenberg vs. Wabash, 355 Ill. 498* (1934), dealt with another phase of this subject. Here the court ruled, in substance, that unless otherwise specified, the law does not require that a newspaper to be secular and of general circulation must be distributed from newsstands and by newsboys. On the contrary, all that was necessary here was that the publication be secular in character, that it circulate among different classes of readers, and that it disseminate information of interest to the general public. It was added that the general circulation of a publication is gauged by the diversity rather than by the number of subscribers.

Other rulings concerning general circulation follow:

46 Corpus Juris., p. 22

Newspaper of general circulation is a term generally applied to a newspaper to which the general public will resort in order to be informed of the news and intelligence of the day, editorial opinion and advertisements, and thereby to render it probable that the notices or official advertising will be brought to the attention of the general public. As to whether a newspaper is of general circulation is manifestly a matter of substance, and not merely size. The term "general circulation" is a relative one, and its meaning must be determined by a process of inclusion and exclusion. That which will be of general circulation in a town of small population cannot be said to be general in a populous city. A newspaper to have the characteristics of a newspaper of general circulation does not necessarily have to be read by all the people of the county. The question as to whether a newspaper is one of general circulation involves other elements besides the number of its subscribers and the size of the community in which it is published and circulates. The patent insides do not affect the status of a newspaper as that of a newspaper of general circulation so long as the paper otherwise meets the necessary requirements of a newspaper of general circulation.

30 Ohio Juris., section 8

The statute requiring the publication of matters affecting the public weal ordinarily provides that the publication shall be in

newspapers having "a general circulation" within the county or other municipality. Of course, it is necessary to pass upon the question whether a paper is one of general circulation where it does not qualify in other respects as one of the class designated by law. The Ohio cases are not in accord as to when a paper is one having a general circulation. A paper circulating only in a city, and not in the rest of the county was held by the supreme court in an early case not to be a paper of general circulation for purposes of legal advertising. One of the circuit courts held a newspaper which had a general circulation in a county having a population of 50,000 to be a paper of general circulation, although it had only 800 subscribers, and none at all in some of the townships. This case was followed by a common pleas decision in a case holding a German newspaper having a subscription list of over 600 to be one of general circulation, although its entire circulation was confined to one section of the county.

The supreme court decided that in a municipality in which there is only one newspaper published, and of general circulation, the publication in that paper of ordinances of a general nature, in the manner and for the period required by G.C. 4227 et seq., is a compliance with the requirements of those statutes. While a city council has the right to designate in which newspapers of opposite political parties ordinances shall be published, the right to ascertain whether the newspapers selected are of general circulation in the city is still left to the courts. For a newspaper to be one of general circulation within the county, its subscription list need not, necessarily, be all paid. It was said, in a recent case in Cuyahoga County, that the notice of a certain statute "should be inserted in a newspaper which people in this county are likely to read, and that, when the circulation is extensive throughout the county, it makes no difference whether it consists of paid subscribers, or non-paying recipients of the same."

Doster vs. Cleveland, 20 O.D.N.P., 548 (1910)

If the widest dissemination of information of the doings of the municipal council shall be the purpose evinced by the language used in this statute (Ohio G.C. 4228, 4229, R.S. 1536-619), and I can find no other purpose, how can it be said that papers with a paid subscription of five hundred and an entire circulation including sales in bulk and papers given away of less than one thousand a day, and that within a limited district, are papers of general circulation in a city of four hundred and fifty thousand to five hundred thousand? Only one person at most in four hundred and fifty to five hundred gets the paper. Such circulation cannot furnish information to as extensive number as compared with the whole number, and that is the meaning of the word general as given by lexicographers.

Times Printing Co. vs. Star Publishing Co., 51 Wash. 667 (1909).

Court agreed that the noon edition of the *Evening Star* was a newspaper on the basis of its size, the regularity of publication, the variety of news it contained. However, its circulation

of 1000 copies sold on the street and 360 subscribers in a city of 275,000 did not make it a newspaper of general circulation:

In view of the charter provision requiring that the paper selected be one of general circulation, the purpose of the publication of official notices, the population of the city of Seattle at the time of the acceptance of the proposal, and treating the word "general" as being equivalent in meaning with extensive, and giving to this word a reasonable interpretation, we are constrained to hold that the *Noon Star* was not a newspaper of general circulation at the time of the acceptance of its proposal to do the city printing. Indeed, we could not reach a different conclusion without unduly restricting the meaning of the word "general."

State ex rel. Sentinel Co. vs. Wood, 14 O.C.C.N.S., 531 (1910)

A newspaper having a circulation of eight hundred in a county containing a population of fifty thousand distributed over twenty townships, and in fifteen of those townships containing a population of thirty-five thousand a circulation of only thirty-six, is a newspaper of general circulation within the meaning of the statute providing for publication. (Section 2508, Ohio G.C.)

46 Corpus Juris., 22

The question as to whether or not a newspaper is one of general circulation involves other elements besides the number of its subscribers. That a newspaper is of general circulation must depend largely upon the diversity of its subscribers rather than upon mere numbers.

In re Green, 21 Cal. App. 138 (1913)

Whether a newspaper is one of general circulation is a matter of substance and not of size, and depends largely upon the diversity of its subscribers rather than upon mere numbers. The mere fact that it makes a specialty of some particular class of business and conveys intelligence of particular interest to those engaged in such business does not deprive it of that character.

46 Corpus Juris., 19

That the circulation of a publication is very limited does not prevent its coming within the definition of a newspaper.

From the foregoing it is seen that the courts are not in agreement as to just what general circulation means. Even where they recognize the basic meaning of the word "general," they have departed from it in applying it in individual cases. This is illustrated in the decision above in which a newspaper had a circulation of only 800 in a county of 50,000 population, the circulation being concentrated, moreover, in five of the twenty townships containing 30 per cent of the population. Nevertheless, the court held that this circulation was

"general." A number of courts have also stressed the importance of the substance and diversity of the circulation rather than mere numbers. This is a proper emphasis but neither substance nor pseudo-diversity is a substitute for circulation which is extensive enough to cover generally all sections of a given community. All such factors should be taken into account in gauging the true character and value of circulation.

Paid Circulation. When is "paid" circulation actually paid? The answers to this question are less simple than one might suppose. Is it "paid," for example, when the subscription price is only nominal, say, 25 cents a year? Does it still come within the definition if the advertised subscription price is $5 a year but for a short time the newspaper can be had by rural subscribers for 50 cents a year? (This actually occurred once when the dailies in a certain large city got into a rural circulation war.)

Is it "paid" when the subscriber actually pays the fixed price but for so doing receives a premium of such value as to reduce greatly the actual cash return to the newspaper when the premium is discounted? (Or the publication may allow commissions such as similarly to reduce the net amount it gets from subscriptions.) Is it "paid" when a subscription price is advertised but only a few readers actually pay or are even asked to pay for the newspaper? Is it "paid" when the fixed price is maintained but subscribers, especially those of long standing, are carried indefinitely in arrears? These are some of the questions involved.

Answers from various sources are available as guides. The Postoffice Department is one and the Audit Bureau of Circulations is another. Pertinent developments are reported in *Circulation Management*, in *Editor & Publisher*, and in the reports and bulletins of state and other newspaper associations as well as from the courts and other official sources. The courts will generally seek to interpret a specific law, but in the absence of such authority may give an opinion based upon their own general understanding. In an Ohio case, *Ambos vs. Campbell, 40 O.A. 346, 351* (1931), the court held:

As we understand the law, it is that, for a newspaper to be regarded as a newspaper of general circulation within the county, such circulation need not necessarily consist exclusively of paid subscribers; that the purpose of the law is clear, namely, that the notice should be inserted in a newspaper which people in this county are likely to read, and that, when the circulation is extensive throughout the county, it makes no difference whether it consists of paid subscribers or nonpaying recipients of the same.

Again, with due regard for the court, it *does* make a difference whether circulation consists of paid or nonpaying subscribers. The element of will or volition is basic in the distinction between the two. The newspaper reader who is a voluntary subscriber is quite different from the reader who finds on his doorstep a publication which he did not ask for, in which he is probably little interested, and of whose prior existence he may not even have been aware.

Aside from other basic and important differences between these two kinds of publications, the reader-subscriber cares enough about his newspaper to be willing to pay for it. He not only does so willingly but probably habitually because he gets value received. The reader of the other sheet may or may not follow it regularly but probably he would be unwilling to pay for it if he had to choose between doing so and not getting it. In any case, the reader of the latter is invariably also an habitual reader of one or more standard newspapers, while the reverse is not true. Again the argument is unanswerable: if the giveaway sheet were essentially more than an advertising medium, its sponsors would normally seek paid subscriptions as a matter of course. In short, the normal preeminence of the paid-for newspaper is clear.

Yet, in *Toledo vs. Babcock, et al, 23 O.C.C. 29* (1911), the court saw no difference between paid in advance subscribers and those who paid in some other manner. It held:

Subscribers to be considered in fixing the circulation of newspapers for publication of ordinances, within the meaning of General Code 4228, are not limited to those paid in advance; "bona fide paid circulation" includes "bona fide subscriptions" whether paid in advance or not.

Such a ruling is proper, providing subscriptions are

not carried on the books indefinitely or in great numbers.

The following references are also pertinent:

In re Herman, 183 Cal., 153 (1920)

The term "a bona fide subscription list of paying subscribers," as used in Section 4460 of the political code, means a real, actual, genuine subscription list which shall contain only the names of those who are in good faith paying for their subscriptions. . . .

In view of the fact that the legislature has not specified the number of subscribers required to constitute a bona fide subscription list, it must be assumed that it meant that the words "bona fide" were to be taken according to their common acception, and it cannot be said that twenty five paying subscribers in various lines of business residing in ten different cities and towns located in three counties, is not a bona fide subscription list of paying subscribers.

46 Corpus Juris., 24

It has been held that the subscribers to be considered in fixing the general circulation of a newspaper are not limited to those paid in advance; and that *bona fide* subscriptions, whether paid in advance or not, may be considered. But it also has been held that, where the statute requires that the newspaper should have a *bona fide* subscription list of paying subscribers, the paper must have a real, actual, genuine subscription list which shall contain only the names of those who are in good faith paying regularly for their subscriptions.

Ashton vs. Stoy, 96 Iowa, 197 (1895)

Where a real estate agent paid in advance for 50 subscriptions as a promotion stunt the court said:

One to whom a publisher sends a newspaper without his consent, at the instance of a third person who pays the subscription for a year for advertising purposes, is not a "bona fide" subscriber.

46 Corpus Juris., 24

A person to whom a newspaper is sent without his knowledge or consent, express or implied, is not a *bona fide* subscriber within the meaning of the statute requiring the selection as an official newspaper of the one having the largest number of *bona fide* yearly subscribers.

Contents. The contents of a publication are vital in determining whether it is a newspaper. Here again the criteria are both qualitative and quantitative. What is the nature of the contents and to which elements of the reading public are they intended to appeal? If they have at least a fairly general appeal, what proportion

of the space in the publication must be devoted to such contents before they serve this function properly?

A paper which carries nothing but news serves only one function of the real newspaper. Editorial opinions are important, various departments add to the general interest, much space is devoted by standard newspapers to informative and entertaining reading matter that is neither news nor editorials. Even advertisements may be defined as business news and as such are important to the reader who pays much less for the publication because it carries advertising. The advertising contents, however, must not overshadow the other if the publication is to remain a *newspaper* with the prestige and privileges it enjoys as such. Nor can the publication devote excessive space to the comics and other trivia and remain a *news*paper by any valid test. Somewhat the same might be said of publications whose editorial contents are largely or wholly plate matter rather than original material.

In a California case, *In re David, 98 Cal. App. 69* (1929), cited in this connection, it was held that where no telegraphic news was printed and the local news was limited to items interesting only to the building and construction industries, the publication was not a newspaper of general circulation. In holding that a newspaper may be one of general circulation even though it predominates in a certain class of news, the court said further:

> But the news published in such newspaper must be of such a character that the general reading public might well look to such paper to learn the news of passing events, and should not be of such a character that the general public would not be at all interested in it.

In *In re Herman, 183 Cal., 153* (1920), the court also declared:

> A newspaper containing a few telegraphic items copied from other papers, a single editorial, no account of local events and chiefly matter of a stereotype nature, . . . is not a newspaper of general circulation published for the dissemination of news and intelligence of a general character within the meaning of 4460 of the Political Code.

It added:

> By the term "a newspaper of general circulation" the legislature had in view publications to which the general public would resort in order to be informed of the news and intelligence of

the day, editorial opinions and advertisements, and thereby to render it probable that the notices or official advertising would be brought to the attention of the general public.

In *Crowell vs. Parker, 22 R.I. 51* (1900), it was held that the *Real Estate and Rental Guide* was not a newspaper of general circulation. This paper was devoted largely to transactions concerning real estate. Even so, the court ruled that it was not a newspaper in which notices of the sale of real estate could legally be published.

Another case turning on such a point, but involving a court newspaper, was that of *Finnegan vs. Buck, 187 N.Y. Supp. 705* (1921). Here the court said:

Latterly the paper has contained certain matter, known in the newspaper language as "plate matter." This "plate matter" consists of dispatches covering general news which has been published in all regular daily newspapers from two to five days earlier, and serves merely as filling in the "legal daily."

In the Indiana case of *Lynn vs. Allen et al., 145 Ind. 584* (1896), the court ruled that "a periodical ephemeral in form, issued daily except Sunday, devoted to the general interest dissemination of legal news and containing other matter of general interest to the public is such a paper."

Various other cases have turned at least in part on the nature of the contents of the publications concerned. Several have involved the status of those special papers known as court and commercial newspapers. Despite their special nature, their relatively small circulations and other limitations, they have been recognized or designated in a number of instances by the courts as newspapers of general circulation for the purpose of public notice. Views of the courts on these and other matters relating to the contents are also cited.

Beecher vs. Stephens, 25 Minn., 146 (1878)

. . . in the ordinary understanding of the word, a newspaper is a publication which usually contains, among other things, what is called the general news, the current news, or the news of the day; and nothing which does not usually contain such news, and is intended for general circulation, is a newspaper in the ordinary sense of the word.

46 Corpus Juris., 20

If a publication contains the general current news of the day, it is none the less a newspaper because it is devoted primarily

to special interests, such as legal, mercantile, political, religious, or sporting.

46 Corpus Juris., 22

As a general rule, in order to be considered as a newspaper of general circulation, the purposes to which the newspaper is devoted must be of common interest to many. There are many strictly literary, medical, legal, religious, and scientific journals which have a large number of subscribers, but are not of general circulation, being published for the information, respectively, of such classes; and are not "newspapers" within the legal meaning of the word. But the fact that a newspaper is devoted to the interest of a particular class of persons, as for instance, those engaged in the same business or calling, and specializes in news and intelligence primarily of interest to that class, will not exclude it from classification as a newspaper of general circulation, if, in addition to such special news, it also publishes news of general character; and hence a newspaper may be a newspaper of general circulation, although primarily devoted to commerce and finance, labor unions, the legal profession, or a particular political party.

30 Ohio Juris., Section 6

Law Journal as Newspaper. A statute dealing with the publication of daily law journals provides that in any county in which there is such a newspaper there shall be published therein the calendars of all courts of record, the motion docket, names of counsel, etc., and the following section provides for the publication therein of legal notices once a week, but states somewhat obscurely, that the jurisdiction over, or irregularity of, a proceeding, trial, or judgment, shall not be affected by anything therein. Periodicals issued daily, containing court and legal news of all kinds, advertisements, some general news items, particularly local, were held to be "newspapers" within the meaning of the statutory requirements respecting advertising, in one case decided before the enactment of the statute, but the legality of such publication was denied in another.

Kellogg vs. Carrico, 47 Mo., 157 (1870)

The *Legal Record and Advertiser* was printed in St. Louis in the form of a newspaper, and was issued to its subscribers daily, except Sundays, when the publication was omitted. It was devoted to the dissemination of general legal intelligence, and engaged extensively in legal advertising, including the publication of notices of sale under deeds of trust and sales on execution, and all judicial sales. It was a law and advertising journal, and so, in a limited sense at least, a newspaper; for whether a paper or not is a question that cannot be determined by a consideration alone of the kind of intelligence it disseminated. It is not the particular kind of intelligence published that constitutes one publication a newspaper rather than another. Newspapers are devoted to the dissemination of intelli-

gence on a great variety of subjects, such as politics, commerce, temperance, religion, and so on; and the law and legal topics and occurrences are not excluded from the range of newspaper enterprise. A paper devoted to the gathering up and dissemination of legal news among its readers is, or at least may be, a newspaper. I regard the *Legal Record* as a newspaper of that character.

Kerr vs. Hitt, 75 Ill., 51 (1874)

The Chicago *Legal News* is published in the city of Chicago, in the county where this proceeding was commenced; is published once a week; is devoted principally to the dissemination of legal intelligence, but makes reference to passing events, contains advertisements, brief notices to the general reader, as well as the legal profession. Thus it will be seen it comes, substantially at least, within the definition given by lexicographers of a "newspaper." It is none the less a newspaper because its chief object is the publication of legal news. Many newspapers published in this and other countries are devoted chiefly to special interests—such as religious and political newspapers; others devoted exclusively to literature, news items, personal and political, brief notices of matters of special public concern, and reference to proceedings of legislative and other public bodies. So it is with this journal. Besides legal it contains other items of news, not only connected with the bench and bar, but others of a general interest. It is that class of journal that will circulate among lawyers, real estate and other business men, for it contains information in regard to sales of real estate, whether under judicial process or under powers. Accordingly, its advertising columns contain notices of sales under trust deeds, on execution, judicial sales under decrees of court, and all manner of notices of legal transactions, as well as a limited number of other advertisements usually found in a newspaper of general circulation.

46 Corpus Juris., 19

A financial newspaper may be defined as a newspaper devoted primarily to matters relating or pertaining to finance or to revenue.

State vs. Big Horn County, 77 Montana, 316 (1926)

These patent insides do not affect the status of the newspaper so long as the paper otherwise meets the necessary requirements of a newspaper of general circulation, as the patent portions might be omitted and the newspaper still meet all of the requirements.

46 Corpus Juris., 19

Supplement as Part of a Newspaper. The publication of an advertisement in the supplement to a newspaper which in all respects conforms to the definition of a newspaper satisfies the statute requiring such an advertisement to be published in a newspaper.

Other

Other considerations than the major ones presented above have also entered naturally into judicial definitions of a bona fide newspaper. Several of these will be cited.

Place of Business. In *Montesano vs. Liberty Warehouse Co. 121 N.J.L. 124* (1938), an advertisement of sale on default was at issue. The case turned on whether the place of business of the newspaper was its main office only or whether branch offices were included. The *Jersey Observer*, printed in Hoboken, had a branch office in Union City. It was conceded that no printing was done at the branch office and also that a newspaper may be published where it is not printed. The question then became whether, under the statutes, "the place of publication of a newspaper is where the paper is first put into circulation" by regular delivery, mail or otherwise. There was no other question of the validity of the notice published in the *Jersey Observer*, although it happened that publication of the same notice in a Union City newspaper was invalid because it did not appear far enough in advance of the sale as required by law. On the point at issue, the court held:

> To give the word such a meaning as would bring within its application any newspaper circulating in a municipality would quite nullify the obvious intent to the legislation, for it is likely that there is no municipality in which newspapers from some source do not circulate, and we think that the maintenance of an office for convenience and expedition in effecting local distribution does not suffice to constitute publication.

A similar view was taken in *People vs. Reed, 252 Ill. 410*, in which it was held that the place of publication is the place where it is first put into circulation, where it is first issued to be delivered or distributed by mail or otherwise to its subscribers but that the place of printing is immaterial.

Still other phases are dealt with in cases involving the language of the publication, the regularity of its issuance, its editions, its age, and whether it is secular, as follows:

Tyhee vs. Hyde, 68 Florida, 389 (1910)

> The English language is the means recognized by our law for communication and information; and while a paper printed in a

foreign language may be a newspaper, it may not be within the purview of a statute requiring publication of legal notices designed for the information of all the people, where the statute contains nothing to indicate an intention to include such a publication.

30 Ohio Juris., Section 6

Where a statute requires a publication to be made in a newspaper, unless there is some provision to the contrary, it will be inferred that the legislation intended the publication to be made in a paper printed in the English language, and a publication employing any other language is not a compliance with the statute.

Cincinnati vs. Bickett, 26 O.S. 49 (1875)

When the law speaks of a newspaper of general circulation, it means one published in the language of the state, which is the English language, and all others can only be of special and not general circulation.

In re Tribune Publishing Co., 12 Cal. A., 754 (1910)

The section (4460, Calif. Political Code) does not require the interval between dates of publication to be equal from the beginning to end, but it must be regular, that is, not spasmodic or occasional.

46 Corpus Juris., 19

The term "newspaper" may include any and all editions of the paper containing substantially the same editorial and general news matter, and having the same general circulation.

46 Corpus Juris., 27

It is the policy of the law that notices or advertisements required to be published by law should be published in newspapers which have been in existence long enough to be of a permanent and substantial character.

46 Corpus Juris., 19

When a newspaper is issued on a secular day, the insertion therein of an advertisement required to be published in a secular newspaper suffices, although the name of the newspaper employed would indicate that it is a Sunday paper.

Mailing Privileges. In the case of *State, ex rel., vs. Urner, 127 O.S., 84* (1933), previously cited, the court based its finding that the *City Bulletin* was a newspaper partly on the fact that it held a Second Class Mailing permit.

It is clear that many factors necessarily enter into any definition. What is required in one locality may not be necessary in another. What was adequate yes-

terday is quite unsuited to present conditions, and what is now sufficient may be obsolete in a few years. Some of the issues involved are suggested by such questions as:

1. What should be the status of newspapers which are politically independent?
2. Should "general" circulation be gauged on a fractional, numerical or percentage basis?
3. When does a newspaper published outside of a given county become one of "general" circulation in that county?
4. Under what circumstances can a trade or class publication be regarded legitimately as a newspaper of "general" circulation for legal purposes?

These and other problems arise in connection with public notices of various kinds. As a rule, the problem is easier to define than to solve. Taking up only the first question just listed, there seems to be no clear agreement—as far as public notices are concerned—as to the eligibility of newspapers which are neither Republican nor Democratic or whatever the major parties may be, but call themselves "independent." Yet in many cases the law provides that certain kinds of legal advertising shall appear in newspapers of "opposite" politics, and there are two viewpoints on this.

Some hold that the law intended that newspapers eligible in such matters should be politically partisan, that is, ordinarily Republican or Democratic. They insist, further, that a newspaper that is "independent," according to its own label, has no politics and therefore is ineligible. Where such a construction has been upheld by the courts it has sometimes worked not only to the disadvantage of "independent" newspapers but the public, since it resulted in important public notices being published in newspapers of much smaller circulation merely because they bore a political label.

Proponents of the "independent" newspapers argue, with some reason, that they *are* of "opposite" politics in the sense they are of *different* politics. Two remedies are suggested to meet this difficulty. One is to drop the requirement of political affiliation entirely as

being obsolescent. The other is to substitute the word "different" for "opposite." That the question is of some practical importance is shown by the trend toward political independence on the part of newspapers in recent years.

Such an issue came up in Ohio in 1937. Section 2508, Ohio General Code, provides for publication of the annual report of the county auditor "in one English newspaper of the political party casting the largest vote in the state at the last election, and in one English newspaper of the political party casting the second largest vote in the state at the last general election, if there be two such newspapers published." With few exceptions prior to 1933 this particular advertising in Wayne County went alternately to the Wooster *Daily Record*, published at the county seat, and the Orrville *Courier-Crescent*. Beginning in 1933, the Orrville newspaper's "share" was divided with the Rittman *Press*, a small weekly. But the Wooster and Orrville newspapers were independent in politics.

The issue was raised by the Rittman *Press* which contended successfully that it met the legal requirements where the Orrville newspaper, whose "turn" it then was to publish the report under the prior arrangement, did not. In consequence, the temporary restraining order obtained by the Rittman paper was ordered made permanent and the court instructed the county auditor to comply with the specific provisions of the statute.

Conclusion

It is only too plain that whatever the source of the definitions of "newspaper," they are anything but uniform, consistent or even logical. Five states, as has been seen, have no such definition on their statute books. What multiplies the confusion is that the very concept of a newspaper is neither simple nor fixed but quite variable.

At first thought it might appear that this Gordian knot could somehow be cut and some relatively simple formula devised to solve at least the worst of the attendant problems. That this is hardly possible is emphasized by the foregoing citations, analysis and dis-

cussion. In theory, it may seem relatively simple to define a newspaper but in practice a given definition may be difficult to apply equitably or adequately. The existing confusion, therefore, is simply proof that in such matters the newspaper industry in all its phases, the bench and the bar, and the public are confronted with a troublesome situation.

Since there is no ready escape from this, what is needed is to take a realistic attitude toward the general problem. It would be as impractical and unfortunate to be tied hand and foot by too narrow a definition as to have one so broad as to amount to a blanket. Both would defeat the real purposes to be served, namely, to safeguard the rights and interests of the public, and to protect bona fide newspapers from the inroads of other kinds of publications whose pretensions are often open to question if not actually spurious.

By and large, what constitutes a newspaper for legal purposes presents many a knotty problem. Legislatures and judges alike have wrestled with the issues thus presented and have come to anything but uniform conclusions on various points. Some of the statutory provisions are inadequate or are out of date or protect occasional entrenched interests in a manner no longer justified. But the courts, too, have their innings. Even where the original premise may have been sound, their conclusions sometimes seem anything but in accord with the law, with facts or with logic. What is really needed is for the codes to be pruned of their inadequate or dead provisions. When and if this is done the way is opened for greatly improved handling of such issues.

APPENDIX

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* For other discussion of the whole question of official newspapers and official and legal advertising, the reader should also consult the following: Hale and Benson, "The Law of the Press," (2nd Ed.); Barnhart, "Weekly Newspaper Management;" Arthur and Crosman, "The Law of Newspapers" (rev. ed); Brown, "Problems of Newspaper Publishing;" Pollard, "Principles of Newspaper Management;" and Pollard, "Public Notice."

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